

LIFESTYLE COMMUNITIES

vs.

CITY OF WORTHINGTON

Deposition of

Michael DeAscentis

January 26, 2024



PRI COURT
REPORTING

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1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
 EASTERN DIVISION

3 LIFESTYLE COMMUNITIES,)
4 LTD., ET AL.,)
)
5 Plaintiffs,)
)
6 vs.) Case No.
) 2:22-cv-1775
7 CITY OF WORTHINGTON,)
8 OHIO,)
)
)
9 Defendant.)

10

11

12 VIDEOTAPED DEPOSITION

13 of MICHAEL DEASCENTIS II

14

15 Taken at the offices of
16 Vorys Sater Seymour and Pease LLP
17 52 East Gay Street
 Columbus, Ohio 43215

18

19 on January 26, 2024, at 9:28 a.m.

20

21 Reported by: Julia Lamb, RPR, CRR

22

23 --0--

24

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on behalf of the Defendant.

20 ALSO PRESENT:

21 Pat Flaherty, Videographer

23 --0--

STIPULATIONS

It is stipulated by and among counsel
for the respective parties that the videotaped
deposition of MICHAEL DEASCENTIS II, the witness
herein, called by the Defendant under the
applicable Rules of Federal Civil Court
Procedure, may be taken at this time by the
stenographic court reporter and notary public by
agreement of counsel; that said deposition may
be reduced to writing stenographically by the
court reporter, whose notes thereafter may be
transcribed outside the presence of the witness;
and that the proof of the official character and
qualification of the notary is waived.

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1 THE VIDEOGRAPHER: Okay. We're on the
2 record. You want to swear in the witness.

3 MICHAEL DEASCENTIS II
4 being first duly sworn, as hereinafter certified,
5 deposes and says as follows:

6 CROSS-EXAMINATION

7 BY MR. SCHUMACHER:

8 Q. Could you state your full name for the
9 record, please.

10 A. Michael James DeAscentis II.

11 Q. Do you also go by Michael DeAscentis
12 Jr.?

13 A. Yes.

14 Q. My name is Paul Schumacher. I represent
15 the city of Worthington in the lawsuit that you
16 and your companies have filed against them.
17 You're aware of that lawsuit?

18 A. Yes.

19 Q. Is your father still involved in the
20 business?

21 MR. MILLER: Objection to form.

22 You may answer.

23 A. Yes.

24 Q. And what role does your father play in

1 the company?

2 A. Land development.

3 Q. And I understand your title is chief
4 executive officer?

5 A. Yes.

6 Q. And that's of Lifestyle Communities
7 Limited?

8 A. Yes.

9 Q. And how long have you been CEO of that
10 company?

11 A. Since 1996.

12 Q. Can you tell me a little bit about the
13 company, when it was formed and what its
14 business is?

15 MR. MILLER: Objection to form.

16 You may answer.

17 A. Apartment development.

18 Q. And when was it formed?

19 A. 1996.

20 Q. Do you understand that you're here today
21 to testify in this federal lawsuit that your
22 company has filed?

23 A. Yes.

24 Q. Who is Worthington Campus, LLC?

1 A. I'm not sure.

2 Q. Is Worthington Campus, LLC an affiliate
3 of Lifestyle Communities Limited?

4 A. I'm not sure.

5 Q. How many companies does Lifestyle
6 Communities Limited have ownership interest in?

7 MR. MILLER: Objection to form.

8 You may answer.

9 A. A lot. More than 50.

10 Q. Do you have access to a list of those
11 companies?

12 MR. MILLER: Objection to form.

13 A. Yes.

14 Q. Would you be able to provide a copy of
15 that list to your attorney if we request one
16 from him?

17 MR. MILLER: Same objection.

18 You may answer.

19 A. Yes.

20 Q. Thank you.

21 How many members are there in Lifestyle
22 Communities Limited?

23 MR. MILLER: Objection to form.

24 You may answer if you understand the

1 question.

2 A. I don't know.

3 Q. Are you a 100 percent owner of Lifestyle
4 Communities Limited?

5 A. No.

6 Q. How many other owners or members are
7 there?

8 A. I don't know.

9 Q. More than two?

10 A. Yes.

11 Q. Does Lifestyle -- do you have access to
12 Lifestyle Communities Limited's articles of
13 incorporation or organization?

14 A. Yes.

15 Q. would you be able to provide a copy of
16 those to your attorneys?

17 A. Yes.

18 Q. Thank you.

19 Have you ever been deposed before?

20 A. Yes.

21 Q. How many times?

22 A. Once.

23 Q. what was the nature of that matter?

24 MR. MILLER: Objection to form.

1 You may answer.

2 A. Architecture.

3 Q. Where was the case pending?

4 A. What city?

5 Q. Yes.

6 A. Columbus.

7 Q. Franklin County?

8 A. Yes.

9 Q. Who was the Plaintiff in the lawsuit
10 that you were deposed in?

11 MR. MILLER: Objection to form.

12 You may answer if you know.

13 A. David Whitt.

14 Q. When did you give the deposition?

15 A. Over five years ago.

16 Q. Well, then you were at least familiar
17 with the process where I'm going to ask some
18 questions and you're going to provide answers
19 under oath?

20 A. Yes.

21 Q. If you don't understand a question that
22 I ask you, please tell me that you don't
23 understand the question --

24 A. Okay.

1 Q. -- or ask me to rephrase it, please. Is
2 that --

3 A. Yes.

4 Q. Okay. If I -- if you do answer a
5 question, however, I'm going to assume that you
6 heard me, understood the question and you
7 answered it truthfully. Is that fair?

8 A. Yes.

9 Q. Thank you.
10 what did you do to prepare for the
11 deposition today?

12 MR. MILLER: Objection to form.

13 You may answer.

14 A. Met with my lawyers.

15 MR. MILLER: And I would caution you,
16 Mr. DeAscentis, not to disclose anything that
17 you discussed with your lawyers.

18 Q. Yeah, I don't want to know what you
19 talked about with your lawyers.

20 How many times did you meet with your
21 lawyers to prepare for the deposition?

22 A. Once.

23 Q. Did you review any documents in
24 preparation for your deposition?

1 A. Yes.

2 Q. Which documents?

3 A. I don't know. I mean, lots of
4 documents.

5 Q. I have a stack in front of me here --

6 A. Okay.

7 Q. -- that's about 8 inches high. Was it
8 at least this many documents --

9 A. No.

10 Q. -- or are we talking less than that?

11 A. Less than that.

12 Q. Okay. Do you recall any of the
13 documents that you reviewed to prepare for this
14 deposition?

15 A. Can you repeat the question?

16 MR. SCHUMACHER: Julia, could you repeat
17 the question, please.

18 (Record read as requested.)

19 A. Some emails from me to other people in
20 the company is the ones that I remembered.

21 Q. I wanted to ask you about that. I've
22 noticed that you have a number of different
23 email addresses within Worthington communities
24 limited and its affiliated companies. Is that

1 true?

2 MR. MILLER: Objection to form. Just
3 FYI, you misspoke and said worthington
4 communities rather than Lifestyle.

5 MR. SCHUMACHER: I'm sorry. Thank you,
6 Joe.

7 Q. You have a number of email addresses
8 associated with Lifestyle Communities Limited
9 and its affiliated companies, don't you?

10 A. Yes.

11 MR. MILLER: Same objection.

12 Q. Which email address do you typically go
13 by most of the time?

14 A. Mdeascentis --

15 MR. MILLER: I'm sorry. Objection to
16 form.

17 You may answer.

18 A. Mdeascentisjr@lifestylecommunities.com.

19 Q. Where did you go to school?

20 A. DeSales.

21 Q. DeSales High School?

22 A. Yes.

23 Q. When did you graduate?

24 A. 1988.

1 Q. College education?

2 A. Yes.

3 Q. Where?

4 A. University of Dayton.

5 Q. Flyer, 1980. How about you?

6 A. 1992.

7 Q. Any further education after college?

8 A. No.

9 Q. And your degree was in what?

10 A. Accounting.

11 Q. After graduating from college in 1992,

12 did you become employed anywhere?

13 A. Yes.

14 Q. Where?

15 A. Deloitte --

16 MR. MILLER: There's no question

17 pending. You've answered the question.

18 MR. SCHUMACHER: I said where. I'm

19 sorry.

20 MR. MILLER: Oh, you did. I didn't pick

21 it up. Sorry.

22 A. Deloitte & Touche.

23 Q. What did you do at Deloitte & Touche?

24 A. Tax staff accountant.

1 Q. And how long did you do that?

2 A. Four years.

3 Q. Where were you employed next?

4 A. Lifestyle Communities.

5 Q. Did you form that company with your
6 father or was it already existing?

7 A. I formed it.

8 MR. MILLER: Objection to form.

9 You may answer.

10 Q. So you formed it by yourself in 1996?

11 A. Actually a Vorys lawyer formed it for
12 me.

13 Q. I'm sorry?

14 A. A Vorys lawyer formed it for me.

15 Q. Okay. Did you have any other business
16 partners when you formed the company?

17 A. Just my dad.

18 Q. And his name is Michael DeAscentis Sr.?

19 A. Correct.

20 Q. Where does he reside?

21 A. Franklin County.

22 Q. Which part of Franklin County?

23 A. New Albany.

24 Q. And how about you, where do you reside?

1 A. New Albany.

2 Q. What was your dad's role, then, in the
3 company when you formed it in 1996?

4 A. Land development.

5 Q. You said earlier that Lifestyle
6 Communities Limited's business was apartment
7 development. Was that the same focus in 1996?

8 A. That's what it started out as.

9 MR. SCHUMACHER: Were you able to get
10 those documents?

11 MR. INGRAM: I can. Not yet.

12 MR. SCHUMACHER: Can we go off the
13 record, then.

14 THE VIDEOGRAPHER: Off the record.

15 (Recess taken.)

16 THE VIDEOGRAPHER: Okay. We're back on
17 the record.

18 BY MR. SCHUMACHER:

19 Q. Mr. DeAscentis, when -- you know that
20 the lawsuit here is involving a piece of
21 property in Worthington, Ohio that's known as
22 the UMCH property?

23 A. Yes.

24 Q. So if I refer to the property in this

1 case, in this deposition, will you understand
2 that I mean the property along High Street
3 approximately 40 acres that is the basis of the
4 lawsuit that you and your company filed?

5 A. Yes.

6 Q. It's accurate that you've been trying to
7 develop this property since as far back as 2012,
8 isn't it?

9 MR. MILLER: Objection to form.

10 You may answer.

11 A. I'm not sure the date we started.

12 Q. You started working with the folks who
13 were trying to develop a Giant Eagle on the
14 premises, didn't you?

15 A. No.

16 Q. Do you know someone named Frank Kass?

17 A. Yes.

18 Q. Who's Frank Kass?

19 A. He's a local developer.

20 Q. Local where?

21 A. Columbus, Ohio.

22 Q. Are you familiar with a conceptual plan
23 he had to build a Giant Eagle grocery store on
24 this property together with an apartment layout?

1 MR. MILLER: Objection to form.

2 You may answer.

3 A. I can't recall.

4 Q. You can't recall that. Let me hand you
5 a document that we'll have marked as --

6 MR. SCHUMACHER: What exhibit are we up
7 to now on your list?

8 COURT REPORTER: You want to go off the
9 record?

10 MR. SCHUMACHER: Yeah. Okay.

11 THE VIDEOGRAPHER: Off the record.

12 --0--

13 (Deposition Exhibit 1 marked.)

14 --0--

15 THE VIDEOGRAPHER: We're back on the
16 record.

17 BY MR. SCHUMACHER:

18 Q. I've handed you now a document we've
19 marked as DeAscentis Exhibit Number 1. Have you
20 had a chance to review that?

21 MR. MILLER: Take what time you need,
22 sir, to review the document.

23 A. Yes.

24 Q. This is a true and correct copy of an

1 email that was sent from Sean Cullen on
2 September 9th, 2012 at 8:58 PM to you?

3 MR. MILLER: Objection to form.
4 September 19th.

5 MR. SCHUMACHER: Did I say September
6 9th?

7 MR. MILLER: September 9th.

8 MR. SCHUMACHER: September 19th. Thank
9 you.

10 Q. Is this a true and correct copy of an
11 email that Mr. Cullen sent to you on
12 September 19th, 2012?

13 MR. MILLER: Same objection.

14 You may answer.

15 A. Yes.

16 Q. Doesn't the body of the email refer to a
17 conceptual plan that Mr. Kass and Mr. Cullen
18 were proposing for the property that we're
19 talking about?

20 MR. MILLER: Objection to form.

21 You may answer.

22 A. It's a long time ago.

23 Q. So you don't remember it?

24 A. I don't. I do remember Frank working on

1 this site. I don't remember this email prior to
2 my involvement.

3 Q. well, you do remember that they were
4 proposing a grocery store on the site together
5 with a plan for residential apartments?

6 MR. MILLER: Objection to form.

7 A. I don't remember.

8 Q. Okay. I'm going to hand you what we'll
9 mark as Exhibit 2, then.

10 --0--

11 (Deposition Exhibit 2 marked.)

12 --0--

13 MR. MILLER: And again, Michael, take
14 what time you need to review the document.

15 THE WITNESS: Okay.

16 BY MR. SCHUMACHER:

17 Q. Is this a true and correct copy of an
18 email that Chase Miller of Lifestyle Communities
19 sent to Sean Cullen on September 25th, 2012 with
20 a copy to you?

21 MR. MILLER: Same objection.

22 A. Yes.

23 Q. And the subject of this email was a
24 conceptual layout for the UMCH property?

1 A. Yes.

2 Q. It appears that Mr. Miller also provided
3 a link to download the concept plan for this
4 proposal, didn't it?

5 A. Yes.

6 Q. Do you have a copy of this concept plan
7 in your files?

8 MR. MILLER: Objection to form.

9 You may answer if you know.

10 A. I don't.

11 Q. All right.

12 MR. SCHUMACHER: Well, we'd like to make
13 a specific request to the Plaintiff in the
14 lawsuit for a copy of the download concept plan
15 referred to in DeAscentis Exhibit 2.

16 MR. MILLER: Noted.

17 BY MR. SCHUMACHER:

18 Q. So Mr. DeAscentis, does this refresh
19 your recollection that there was a proposal by
20 Mr. Kass and his company to develop this
21 property for a grocery store, including some
22 apartments?

23 MR. MILLER: Objection to form.

24 You may answer.

1 A. I don't see the grocery store. I see
2 the apartments on the email.

3 Q. Yes.

4 A. And Frank builds apartments. Frank
5 builds grocery stores.

6 Q. My question for you, sir, is are you
7 telling us that you don't remember that Mr. Kass
8 was proposing building a Giant Eagle on the site
9 along with these apartments?

10 A. I was saying I don't see it in the
11 email.

12 Q. I agree with you it's not in the email.
13 what I'm asking you, sir, is are you telling the
14 Court that you don't recall --

15 A. I don't recall.

16 Q. -- that he wanted to build a Giant
17 Eagle?

18 MR. MILLER: Objection to form.

19 You may answer.

20 A. I don't recall.

21 Q. Okay. So you don't recall how the
22 community reacted to the proposal to build the
23 Giant Eagle and an apartment complex on the
24 property. Is that what you're saying?

1 MR. MILLER: Objection to form.

2 A. I don't recall.

3 Q. Okay. Who is Chase Miller?

4 A. Chase was an employee that worked at the
5 company.

6 Q. Which company?

7 A. Lifestyle Communities.

8 Q. When you say Lifestyle Communities, are
9 you referring to Lifestyle Communities Limited?

10 A. Yes.

11 Q. Thank you.

12 We can agree on that going forward?

13 A. Yes.

14 Q. Okay. You would agree with me, I think
15 you testified earlier, that Lifestyle
16 Communities has maybe 50 affiliate companies?

17 A. Yes.

18 Q. Where is Mr. Miller now? Is he still
19 employed?

20 A. No.

21 Q. When was he last employed at Lifestyle
22 Communities?

23 A. I don't know.

24 Q. He was involved in the development of

1 the property that we're talking about, isn't he?

2 MR. MILLER: Objection to form.

3 You may answer if you understand the
4 question.

5 A. Yes.

6 Q. You knew that he participated in making
7 a presentation to the community in 2015, don't
8 you?

9 A. I don't remember the year, but I know he
10 made a presentation.

11 Q. Were you present at the presentation?

12 MR. MILLER: Objection to form.

13 You may answer.

14 A. I don't remember.

15 Q. Let me hand you what has previously been
16 marked as Brownlee Exhibit 2.

17 MR. MILLER: Michael, as always, I would
18 advise you to take what time you need to
19 familiarize yourself with the document.

20 A. I mean, that'll take me a long time.

21 Q. Well, let me -- maybe I can make it easy
22 for you. Mr. Brownlee testified in his
23 deposition recently that Exhibit 2 to his
24 deposition is the development agreement that was

1 executed between the United Methodist Children's
2 Home and LC North High Street Limited on
3 June 26, 2015. Are you aware of that?

4 MR. MILLER: Objection to form.

5 A. No.

6 Q. So you're not -- you've never seen this
7 document before?

8 MR. MILLER: Give the witness time to
9 review the document.

10 MR. SCHUMACHER: Sure. That's fine.

11 MR. MILLER: Not saying --

12 MR. SCHUMACHER: Take as much time --

13 MR. MILLER: -- you need to review it
14 word for word -- hang on, Paul. But he's asked
15 you if you've seen the document before.

16 A. I don't remember.

17 Q. Let me ask it this way. Did your
18 company or one of your affiliate companies enter
19 into a development agreement with United
20 Methodist Children's Home on June 26, 2015?

21 MR. MILLER: Objection to form.

22 A. I'm not sure.

23 Q. Have you had a chance to review it now?

24 A. Yes.

1 Q. Are you familiar with the document?

2 A. Just from looking at it just now.

3 Q. This is the development agreement that
4 your affiliate company entered into with the
5 United Methodist Children's Home, isn't it?

6 MR. MILLER: Objection to form. He
7 testified that he didn't recall.

8 Q. Is that your testimony?

9 A. Yes.

10 Q. So you're the CEO of Lifestyle
11 Communities Limited and you don't recall
12 entering into a development agreement with UMCH
13 in 2015?

14 MR. MILLER: Objection to form. Asked
15 and answered.

16 Q. Is that your testimony?

17 A. Well, I didn't sign it.

18 Q. I understand that.

19 A. I wasn't aware that we had a development
20 agreement.

21 Q. So you were never aware of the fact that
22 your company and its affiliated companies were
23 negotiating with UMCH to enter into a
24 development agreement for this property. Is

1 that your testimony?

2 MR. MILLER: Objection to form.

3 A. I'm aware that we were negotiating to
4 purchase the property.

5 Q. Okay. And you ultimately did, didn't
6 you?

7 A. Yes.

8 Q. Let me hand you a copy of another
9 exhibit that was previously marked at Bo
10 Brownlee's deposition as Exhibit 3. And before
11 I do that, who is Bo Brownlee?

12 A. Bo Brownlee is a former employee that
13 was -- had several roles with the company for
14 probably 20 years.

15 Q. And he recently retired?

16 A. He recently left the company.

17 Q. And he was general counsel?

18 A. For some time.

19 Q. When he left the company, he was the
20 general counsel of Lifestyle Communities
21 Limited?

22 A. No.

23 Q. What was his role when he left?

24 A. Development director.

1 Q. Okay. When did he cease being general
2 counsel?

3 A. I don't know.

4 Q. Did he have a role in negotiating the
5 purchase of the real estate that forms the basis
6 of this lawsuit?

7 A. I don't know.

8 Q. You don't know. All right. Let's look
9 at Exhibit 3 from his deposition.

10 A. Okay.

11 Q. You've had a chance to review the
12 document?

13 A. Yes.

14 Q. Are you familiar with the document?

15 A. Just by reading it just now. I didn't
16 remember it.

17 Q. You signed the document, didn't you?

18 A. I did.

19 Q. So you know it is the real estate
20 purchase contract that you and your company
21 entered into on April 20th, 2017 to purchase the
22 property from UMCH?

23 MR. MILLER: Objection to form.

24 You may answer.

1 A. Yes.

2 Q. And as far as you know is that a true
3 and correct copy of the document that you
4 signed?

5 MR. MILLER: Objection to form.

6 You may answer.

7 A. Yes.

8 Q. Did you have any role in negotiating or
9 drafting that agreement?

10 A. Negotiating, not drafting.

11 Q. What was your role in negotiating it?

12 A. Discussing with Denny Friedman I think
13 his name was, Denny, and David Fisher their
14 representative.

15 Q. I'm sorry, I couldn't hear you.

16 A. David Fisher and Denny Friedman I think
17 was the chairman of UMHC [sic]. Board member.
18 He was a board member. I had discussions with
19 both of them over the years.

20 Q. Were either Exhibit 2 -- Brownlee
21 Exhibit 2 or Brownlee Exhibit 3 documents that
22 you reviewed in preparation for your deposition
23 here today?

24 A. I don't believe so.

1 Q. Okay. You eventually did close to
2 purchase the property, didn't you?

3 MR. MILLER: Objection to form.

4 You may answer.

5 A. Yes.

6 Q. That closing didn't happen, though,
7 until about January of 2021?

8 A. I don't recall the date.

9 Q. Do you recall obtaining a loan from a
10 bank to purchase the property pursuant to
11 Brownlee Exhibit 3?

12 MR. MILLER: Objection to form.

13 A. Is Brownlee Exhibit 3 the purchase
14 contract?

15 Q. That's what it says.

16 A. Yes.

17 Q. Did you personally guarantee that loan?

18 A. I don't remember.

19 Q. So you don't remember personally
20 guaranteeing \$6.5 million loan at all?

21 MR. MILLER: Objection to form.

22 A. No.

23 MR. SCHUMACHER: Let's go off the record
24 for a second.

1 MR. MILLER: Sure.

2 THE VIDEOGRAPHER: Off the record.

3 (Recess taken.)

4 THE VIDEOGRAPHER: Back on the record.

5 --0--

6 (Deposition Exhibit 3 marked.)

7 --0--

8 BY MR. SCHUMACHER:

9 Q. Let me hand you a document that we'll
10 have marked as DeAscentis Exhibit 3.

11 A. Okay.

12 Q. Have you had a chance to review the
13 document we've marked as DeAscentis Exhibit 3?

14 A. Yes.

15 Q. And you see in the bottom right-hand
16 corner it says LC a bunch of zeroes and 7013?

17 A. Oh, yes.

18 Q. This is an email -- well, is this a true
19 and correct copy of an email that you sent on
20 December 27th, 2020 to Dick Miller and Joe
21 Pizzino at Lifestyle Communities?

22 MR. MILLER: Objection to form.

23 You may answer.

24 A. Yes.

1 Q. who are Dick Miller and Joe Pizzino?

2 A. Dick is -- Dick Miller is my former CFO,
3 and Joe Pizzino is my accountant -- is an
4 accountant that works for us.

5 Q. It looks like there's a document
6 attached here. Says Worthington Campus (UMCH)
7 Land Acquisition Loan FCBank, and then it looks
8 like a date 12-2020. You see that?

9 A. Yes.

10 Q. What is that?

11 A. I'm assuming that's the date of the
12 loan.

13 Q. Does this refresh your recollection that
14 you personally guaranteed a loan to acquire the
15 property?

16 MR. MILLER: Objection to form.

17 A. I don't know whether I -- I don't
18 remember whether I guaranteed it or not.

19 --0--

20 (Deposition Exhibit 4 marked.)

21 --0--

22 BY MR. SCHUMACHER:

23 Q. We'll mark this as DeAscentis Exhibit 4,
24 then.

1 A. Okay.

2 Q. Have you had a chance to review
3 Exhibit 4?

4 A. Yes.

5 Q. Did you receive Exhibit 4?

6 MR. MILLER: Objection to form.

7 A. I'm sorry, I don't understand.

8 Q. Did you as the CEO of Lifestyle
9 Communities, Ltd. receive a copy of this loan
10 summary?

11 MR. MILLER: Objection to form. He's
12 received one this morning. You mean --

13 Q. At the time you obtained -- when
14 Exhibit 3 was sent to you, did you also receive
15 this attachment, the loan summary dated December
16 of 2020?

17 MR. MILLER: Objection to form.

18 You may answer if you recall.

19 A. I don't remember.

20 Q. All right. So you don't remember that
21 FCBank was going to loan a new company that you
22 established known as Worthington Campus, LLC,
23 which happens to be a Plaintiff in this lawsuit,
24 a \$6.5 million loan that you were going to

1 personally guarantee?

2 MR. MILLER: Objection.

3 Q. You don't remember that?

4 MR. MILLER: Objection to form. Assumes
5 certain facts. Mischaracterizes prior
6 testimony. It's a different question.

7 A. I remember we were getting a loan from
8 FCBank. I don't remember whether I was going to
9 be a guarantor until reading this document.

10 Q. So now that you've read the document, it
11 refreshes your recollection that the Plaintiff
12 in this lawsuit was going to be a borrower on a
13 \$6.5 million loan to buy this property and you
14 were going to personally guarantee it?

15 MR. MILLER: Same objections.

16 A. Yes.

17 Q. So I just want to make sure we're clear.
18 Until I showed you this document, you could not
19 recall that you personally guaranteed a \$6.5
20 million loan to buy the property?

21 A. No.

22 MR. MILLER: Same objections.

23 Q. I'm sorry?

24 MR. MILLER: Asked and answered --

1 MR. SCHUMACHER: Joe, if you --

2 MR. MILLER: -- about three times.

3 MR. SCHUMACHER: -- let the witness
4 answer.

5 MR. MILLER: I've let him answer it
6 three times.

7 MR. SCHUMACHER: You just stepped on
8 his -- you just stepped on his answer. I don't
9 know if you got that, Julia.

10 COURT REPORTER: I heard no.

11 A. No.

12 Q. So it took me showing you this document
13 for you to remember that you personally
14 guaranteed a \$6.5 million loan to buy the
15 property for Worthington Campus, LLC, a newly
16 formed entity?

17 A. Yes.

18 MR. MILLER: Same objections.

19 Q. All right. Thank you.

20 You see where it says guarantor
21 covenants?

22 A. Yes.

23 Q. Do you know what \$2 million of minimum
24 liquidity means?

1 A. Yes.

2 Q. What does it mean?

3 A. It means that it would require me as the
4 guarantor to have at least \$2 million in cash.

5 Q. And you told the bank that you had
6 \$50 million in minimum net worth which is the
7 net amounts due from affiliates.

8 MR. MILLER: Objection to form.

9 Q. Is that right?

10 A. That's what this document says.

11 Q. Isn't that true?

12 MR. MILLER: Same objection.

13 A. Are you asking me if I have \$50 million
14 of net worth?

15 Q. I'm asking you if you told the bank that
16 you had \$50 million of minimum net worth so you
17 could personally guarantee this loan?

18 MR. MILLER: Same objections.

19 A. Yes.

20 Q. Thank you.

21 So now you do remember buying this
22 property that you started to negotiate for in
23 2015?

24 A. Yes.

1 Q. Thank you.

2 By the way, that Exhibit 3 that you
3 executed in April of 2017 had a contingency for
4 you obtaining rezoning of the property, correct?

5 MR. MILLER: Objection to form. So
6 you're referring him back to Brownlee Exhibit 3?

7 MR. SCHUMACHER: Yes.

8 A. Is that the real estate purchase
9 contract?

10 Q. That is.

11 MR. MILLER: Do you want to direct his
12 attention to a specific provision?

13 Q. Well, I want to know first are you
14 telling us that you don't remember that the
15 purchase contract you entered into had a
16 contingency for you to obtain zoning?

17 MR. MILLER: Objection to form.

18 Q. You don't know that generally?

19 A. I don't.

20 MR. MILLER: You've asked a couple
21 different questions.

22 MR. SCHUMACHER: All right.

23 MR. MILLER: Does he recall, does he
24 know.

1 MR. SCHUMACHER: All right.

2 MR. MILLER: Which question do you want
3 to ask, Paul?

4 MR. SCHUMACHER: That's fine.

5 A. I don't remember.

6 Q. I just want to know when you testify in
7 front of a federal court --

8 A. Yes.

9 Q. -- are you going to agree that you knew
10 that when you entered into this contract,
11 Brownlee Exhibit 3, that it had a contingency
12 for zoning? That's all I want to know.

13 A. Yeah. I don't remember.

14 Q. Okay. So you don't remember that the
15 contract that you guaranteed eventually to buy
16 this property was contingent upon you obtaining
17 zoning -- rezoning of the property?

18 MR. MILLER: Paul, asked and answered.
19 You can answer it, but this day is going to be
20 real long if you keep asking --

21 A. I can't remember whether --

22 MR. MILLER: -- him a question four
23 times.

24 A. I can't remember whether we had a zoning

1 contingency or not.

2 Q. Okay. That's fine.

3 A. We buy lots of different property.

4 Q. I understand.

5 A. It's hard for me to remember something
6 that was so long ago. I just don't want to be
7 inaccurate.

8 Q. I just want to be clear.

9 A. Yeah.

10 Q. Are you telling a jury that in April of
11 2017 when you signed this contract that you
12 weren't aware that it had a contingency for
13 rezoning?

14 MR. MILLER: Asked and answered.

15 A. I don't recall. I mean, I can read it
16 and see what it says.

17 Q. That's fine. You're the CEO of the
18 company, and if you don't recall that there was
19 a zoning contingency in the contract, I don't
20 want to belabor the point.

21 MR. MILLER: Who's testifying, Paul, the
22 witness or you? All these questions about tell
23 the jury this, tell the jury that, ask a
24 question four times, Paul, we're going to be

1 here all day or we're just going to have to cut
2 it off. Keep it direct.

3 MR. SCHUMACHER: No. I told you I'd try
4 to get done by three for your personal -- at
5 your personal request if it went well. So if
6 you can avoid the soliloquies, then I think we
7 can --

8 MR. MILLER: They're not soliloquies. I
9 do think the witness --

10 MR. SCHUMACHER: Then I think --

11 MR. MILLER: -- is entitled to a level
12 of respect --

13 MR. SCHUMACHER: Then I think we can
14 probably --

15 MR. MILLER: Most of these questions,
16 Paul, I --

17 MR. SCHUMACHER: I'm not done talking.

18 MR. MILLER: Most of these questions,
19 Paul, I could object not to just form but to
20 tone. Dial it back. The witness is being
21 respectful, and you're the one raising --

22 MR. SCHUMACHER: Joe.

23 MR. MILLER: -- your voice and treating
24 him discourteously.

1 MR. SCHUMACHER: Joe, you've objected to
2 every question that's been asked so far and I've
3 just ignored that. All right? I will continue
4 to do that.

5 MR. MILLER: Great.

6 MR. SCHUMACHER: I don't know that it's
7 helpful for you to object to every question, but
8 if that's your choice, that's your choice.

9 MR. MILLER: I'm just asking you to be
10 courteous and respectful to the witness.

11 MR. SCHUMACHER: And I have been.
12 You've been interjecting.

13 BY MR. SCHUMACHER:

14 Q. Mr. DeAscentis, if you could refer to
15 section 11 of Brownlee Exhibit 3.

16 MR. MILLER: Say that again, Paul. I'm
17 sorry. Not the question, but just to what
18 you're referring.

19 MR. SCHUMACHER: Brownlee Exhibit 3.

20 MR. MILLER: Oh, just the exhibit in
21 general. I'm sorry.

22 MR. SCHUMACHER: I referred him to
23 section 11.

24 MR. MILLER: Thank you. That's what I

1 was asking.

2 THE WITNESS: Okay.

3 BY MR. SCHUMACHER:

4 Q. Have you had a chance to review section
5 11?

6 MR. MILLER: Take what time you need to
7 do so if you're going to be asked specific
8 questions about section 11.

9 A. Okay.

10 Q. Have you had a chance to review section
11 11(a)?

12 A. Yes.

13 Q. That contract contains a contingency for
14 LC obtaining rezoning of the property?

15 MR. MILLER: Objection to form.

16 You may answer.

17 A. I mean, it's contingent on getting the
18 subdivision plat and then I think subsequent
19 properties zoned. I mean, I didn't write it.

20 Q. Okay. That's fine. So you're -- I'm
21 sorry, your company and you yourself have
22 developed dozens of properties, haven't you?

23 A. Yes.

24 Q. And you enter into contracts like this

1 all the time, don't you?

2 A. Yes.

3 Q. And this is like many of the contracts
4 you enter into, isn't it?

5 MR. MILLER: Objection to form.

6 You may answer.

7 Q. It contains contingencies, right?

8 A. Well, this is a closing.

9 Q. Sure.

10 A. These are closing deliveries, not --
11 typically the contingency section's in the
12 front, I think.

13 Q. Okay. I understand you're not a lawyer,
14 right?

15 A. Yeah. I just want to make sure I'm
16 being accurate with my answer.

17 Q. You're the deal guy, right?

18 A. Yeah, but I don't write contracts.

19 Q. Okay. But when you make a deal to
20 acquire property that needs to be rezoned, you
21 typically use a contingency for the property to
22 get rezoned, don't you?

23 A. Sometimes.

24 Q. Okay.

1 A. Depends on the price.

2 Q. Sure. And you did in this case, right?

3 MR. MILLER: Objection to form.

4 A. I don't know.

5 Q. Okay. Do you recall ever waiving that
6 contingency to obtain a lower price?

7 MR. MILLER: Objection to form.

8 You may answer.

9 For this property, right?

10 MR. SCHUMACHER: Yes, for this property.

11 A. Yes.

12 Q. And what do you recall about that,
13 Mr. DeAscentis?

14 A. I knew you were going to ask me that. I
15 mean, I think I remember. I remember having a
16 conversation with Denny Friedman about --

17 Q. Can you -- I can't hear you.

18 A. I remember having a conversation with
19 Denny Friedman about him not wanting to wait for
20 a closing that was extended over a long period
21 of time. I don't know whether it was contingent
22 upon zoning. I don't remember.

23 Q. I'm confused. You said you did remember
24 the waiver of this contingency and now you said

1 you don't remember the contingency?

2 A. Well, I remember having a conversation
3 with Denny about a closing and a price,
4 negotiating a price for a closing.

5 Q. Okay. And do you recall it --

6 A. But I don't know reading this document
7 whether that closing was contingent on zoning
8 specifically. I can't recall for sure.

9 Q. We can agree that you knew that the
10 property that we're in this lawsuit about was
11 required to be rezoned?

12 MR. MILLER: Objection.

13 Q. We can agree on that, can't we?

14 MR. MILLER: Objection to form.

15 A. For us to development it?

16 Q. Yes.

17 A. Yes.

18 Q. You knew back when you first got
19 involved in this project that the property along
20 High Street was zoned for S1, C1, C2 and a
21 certain residential district, didn't you?

22 MR. MILLER: Objection to form.

23 A. I don't recall the actual zoning that
24 was in place.

1 Q. Fair enough. But you do know that you
2 needed to obtain approval of the city council in
3 order to rezone the property to build
4 apartments?

5 MR. MILLER: Objection. Asked and
6 answered.

7 A. I knew we had to rezone the property in
8 accordance with the comprehensive plan in order
9 to permit our development.

10 Q. Have you read the comprehensive plan?

11 A. I don't remember.

12 Q. Is that one of the documents you
13 reviewed in preparation for your deposition?

14 A. No.

15 Q. Did you review any of the city council
16 minutes of their meetings about this property?

17 MR. MILLER: Objection to form.

18 A. In preparation?

19 Q. Yes.

20 A. No.

21 Q. Have you ever read them?

22 A. I don't remember.

23 Q. You've developed mixed use properties in
24 many states, haven't you?

1 A. Yes.

2 Q. And you have employees who deal with
3 issues like obtaining rezoning so you can
4 develop properties, don't you?

5 A. Yes.

6 Q. Who are the people that were involved in
7 this project for the UMCH property that were
8 involved in rezoning the property or obtaining
9 the rezoning?

10 MR. MILLER: Objection to form.

11 A. Chase Miller, Bo Brownlee, and I know
12 Brent Miller, maybe Anthony Lococo. Maybe
13 Anthony Lococo, I think. I'm not sure.

14 MR. MILLER: I don't want you to
15 guess --

16 A. Yeah. I'm not sure.

17 MR. MILLER: If you need to qualify your
18 answer.

19 Q. What was Brent Miller's role in the
20 company?

21 A. President.

22 Q. He's no longer with the company, either,
23 is he?

24 A. No.

1 Q. Do you know where he is?

2 A. I think he's retired.

3 Q. My question is do you know where he is?

4 A. In Columbus, Ohio.

5 Q. Have you spoken to him recently?

6 MR. MILLER: Objection to form.

7 You may answer.

8 A. No.

9 Q. So you haven't spoken to him within the
10 last year and a half?

11 A. Oh, yes.

12 Q. Okay.

13 A. You said recently. I thought you meant
14 like the last couple days.

15 Q. That's why I asked.

16 A. Yeah.

17 Q. So you stay in touch with Mr. Miller?

18 A. Yes.

19 Q. What about Chase Miller?

20 A. No.

21 Q. All right. Do you know where he's
22 located now?

23 A. Columbus, Ohio.

24 Q. Have you spoken to him in the last

1 couple of years?

2 A. Yes.

3 Q. Do you stay in touch with him?

4 A. No.

5 Q. Anthony Lococo?

6 A. Yes.

7 Q. what is his role?

8 A. He was a development associate that

9 worked for Chase.

10 Q. Is he still with the company?

11 A. No.

12 Q. Do you know where he is?

13 A. No.

14 Q. Have you spoken to him in the last

15 couple years?

16 A. No.

17 MR. MILLER: If you'll just pause for a

18 minute in case I need to object, that would be

19 great.

20 MR. SCHUMACHER: You can have a standing

21 objection to form if you'd like.

22 Q. Every local government has different

23 requirements in terms of rezoning properties,

24 don't they?

1 A. Yes.

2 Q. You've fought the battle of trying to
3 obtain rezoning in many communities around the
4 country, haven't you?

5 MR. MILLER: Objection to form.

6 You may answer.

7 A. Yes.

8 Q. Does your company typically obtain a
9 zoning report before they attempt to rezone --
10 I'm sorry, to develop a property?

11 MR. MILLER: Objection to form.

12 You may answer if you understand the
13 question.

14 A. I don't know what a zoning report is.

15 Q. Do you ever engage outside consultants
16 to obtain information about the zoning
17 requirements in a particular area where you're
18 going to try to develop?

19 A. Yes.

20 Q. And do you -- is that something you do
21 in-house or do you go outside?

22 A. It depends.

23 Q. And who would you go outside to obtain
24 that type of information from?

1 MR. MILLER: Objection to form.

2 You may answer.

3 A. Sometimes it's engineers. Sometimes
4 it's local law firms.

5 Q. And in this case what did you do in
6 order to obtain information about trying to
7 rezone the property?

8 MR. MILLER: Objection to form.

9 A. I don't --

10 MR. MILLER: At any time, Paul?

11 Q. At any time during this -- the history
12 of this project.

13 MR. MILLER: Objection to form.

14 A. Can you repeat the question?

15 Q. Yeah. Who did you get involved in this
16 case to try to obtain rezoning of the UMCH
17 property?

18 A. I wouldn't have hired anybody. Our team
19 would have hired them.

20 Q. Who would that be?

21 MR. MILLER: Objection to form. Team or
22 who they hired?

23 MR. SCHUMACHER: Either one.

24 A. Probably Brent Miller --

1 MR. MILLER: Objection to form.

2 A. -- or Bo Brownlee.

3 Q. All right. Do you know who they hired
4 to attempt to rezone this property for your
5 company?

6 MR. MILLER: Same objections.

7 A. I mean, they would probably hire an
8 engineer, an architect.

9 Q. Did you hire any lawyers in this case to
10 attempt to obtain rezoning of the property?

11 MR. MILLER: Same objections.

12 A. I didn't. I'm sure they did.

13 Q. I'm sorry, Mr. DeAscentis, if I didn't
14 say this before. When I'm asking about you, I'm
15 assuming that as the chief executive officer of
16 the company that you know what's going on in the
17 company. So my question is directed to you in
18 your role as CEO of the company.

19 MR. MILLER: Objection to form. And he
20 is answering personally. Are you saying now
21 something different that you're expecting him to
22 answer for all of Lifestyle Communities? Your
23 use of you, you seemingly go back and forth so
24 he's just trying to be accurate.

1 MR. SCHUMACHER: Okay.

2 BY MR. SCHUMACHER:

3 Q. Mr. DeAscentis, do you personally know
4 who Lifestyle Communities Limited or any of its
5 affiliate companies hired to attempt to rezone
6 this property?

7 MR. MILLER: Objection to form.

8 A. I know they hired LRK who's an
9 architectural firm.

10 Q. No law firms?

11 A. I'm sure they did.

12 Q. So you don't -- you don't recall hiring
13 Tom Hart and his firm to do this work?

14 A. I never hired Tom Hart.

15 MR. MILLER: Objection to form.

16 You may answer.

17 Q. So I want to know. Michael DeAscentis
18 personally does not recall hiring Tom Hart and
19 his firm to obtain rezoning of this property?

20 MR. MILLER: Objection to form. That's
21 not what he said.

22 Q. That's what I'm asking. Are you telling
23 us --

24 A. I don't recall.

1 Q. -- that you don't recall hiring Tom
2 Hart?

3 A. Oh, I'm saying I didn't hire Tom Hart.

4 Q. I understand that. You've made it very
5 clear that you have a lot of people who do
6 hiring for you. My question is different. My
7 question is does Michael DeAscentis recall
8 hiring Tom Hart to obtain rezoning of this
9 property?

10 A. No.

11 Q. Okay. Very good.

12 MR. MILLER: Paul, other than our false
13 start, we've been going about an hour. No need
14 to do it now, but about every hour I like to
15 take just a very short break, 5 minutes to
16 stretch the legs.

17 MR. SCHUMACHER: That's fine.

18 MR. MILLER: So whenever you're at a
19 good point.

20 MR. SCHUMACHER: I will certainly do
21 that.

22 MR. MILLER: Okay.

23 MR. SCHUMACHER: why don't we break now
24 then.

1 THE VIDEOGRAPHER: Off the record.

2 (Recess taken.)

3 THE VIDEOGRAPHER: Back on the record.

4 MR. SCHUMACHER: You ready, Julia?

5 Okay.

6 BY MR. SCHUMACHER:

7 Q. Mr. DeAscentis, do you recall entering
8 into a joint venture between Lifestyle
9 Communities and the United Methodist Children's
10 Home for the purpose of developing 30 acres on
11 High Street that we've referred to in this case
12 as the property?

13 A. I recall the Brownlee exhibit that had
14 the development agreement in there.

15 Q. Do you recall entering into that
16 agreement as early as 2013?

17 A. I don't.

18 --0--

19 (Deposition Exhibit 5 marked.)

20 --0--

21 MR. SCHUMACHER: Is this four, Julia?

22 COURT REPORTER: Five.

23 MR. SCHUMACHER: Five.

24 MR. MILLER: Let's not think out loud.

1 Take a look at the exhibit and you'll be asked
2 questions about it.

3 BY MR. SCHUMACHER:

4 Q. Have you had a chance to review
5 Exhibit 5?

6 A. Yes.

7 Q. Is this a true and correct copy of an
8 email you sent on September 9th, 2013 to
9 Jennifer Rea?

10 A. Yes.

11 Q. Who is she?

12 A. A former assistant.

13 Q. Your assistant?

14 A. Yes.

15 Q. You see where it says subject: Forward:
16 re: re?

17 A. Yes.

18 Q. Do you know why it says that?

19 A. I don't.

20 Q. Okay. Who's Sam Koon?

21 A. Sam Koon is an appraiser in Franklin
22 County.

23 Q. And why were you writing to him or
24 forwarding a message to him?

1 MR. MILLER: Objection to form. I'm not
2 seeing where the document reflects that.

3 MR. SCHUMACHER: Yeah, me either that's
4 why I asked about the forward re re.

5 MR. MILLER: Looks like Mr. DeAscentis
6 forwarded the message to his assistant.

7 MR. SCHUMACHER: Right.

8 MR. MILLER: Okay. I don't see where it
9 was forwarded to Mr. Koon.

10 Q. Let me ask you this question.

11 A. I don't understand.

12 Q. Let me ask you this question. You wrote
13 to Sam on September 5th, 2013, didn't you?

14 A. Yes.

15 Q. What were you writing to him about?

16 MR. MILLER: Objection to form.

17 You may answer.

18 A. To schedule a meeting on the 16th.

19 Q. About?

20 A. Getting a contract with UMHC.

21 Q. For what?

22 A. The purchase of the property.

23 Q. Why would Sam Koon be able to assist you
24 in purchasing a piece of property?

1 MR. MILLER: Objection to form.

2 A. He had some role with UMHC as a
3 consultant.

4 Q. You mean UMCH?

5 A. UMCH.

6 Q. He worked for UMCH?

7 A. I don't know.

8 Q. He worked for you at one point, didn't
9 he?

10 A. No.

11 MR. MILLER: Objection to form.

12 Q. You never paid him?

13 A. Oh, yes.

14 Q. When I said work for --

15 A. I thought you meant employed by me.

16 Q. But you paid him to work with you on a
17 joint venture?

18 MR. MILLER: Objection to form.

19 You may answer if you know or understand
20 the question.

21 A. I've used Sam Koon hundreds of times in
22 25 years.

23 Q. He's the guy you use to buy property,
24 isn't he?

1 A. No.

2 Q. He's the -- what do you use him for,
3 then?

4 A. He's an appraiser.

5 Q. Okay. And you use him to appraise
6 property --

7 A. Appraise property.

8 Q. -- that you want to buy?

9 MR. MILLER: Objection to form.

10 A. Sometimes.

11 Q. Okay. Who's David Fisher?

12 A. He's a lawyer.

13 Q. And you hired him to assist you in
14 purchasing this property at UMCH, didn't you?

15 MR. MILLER: Objection to form.

16 A. I don't know if we actually hired him.

17 Q. He acted on your behalf in negotiating
18 with UMCH, didn't he?

19 MR. MILLER: Same objection.

20 A. Yes.

21 Q. He also represented UMCH and its board,
22 didn't he?

23 A. In some capacity. I'm not sure which
24 one.

1 Q. In such a capacity that you felt or your
2 company decided to obtain a waiver of any
3 conflict of interest for Mr. Fisher, attorney,
4 working for both UMCH and LC, right?

5 A. That's what this email says.

6 Q. I'm asking you, isn't that the case?

7 A. I don't know if David was an -- a member
8 of UMHC or just a paid lawyer. His dad was a
9 minister, a methodist minister, so he works for
10 a lot of methodist organizations sometimes as a
11 volunteer. I don't know whether he was paid, I
12 don't know if he was an employee, I don't know
13 if he was on the board. I don't remember.

14 Q. You don't remember?

15 A. He had some involvement. I just can't
16 be accurate.

17 Q. You have a good relationship with David
18 Fisher, don't you?

19 A. Yes.

20 Q. You knew he was a lawyer, right?

21 A. Yes.

22 Q. You used him as a lawyer to help
23 negotiate with the UMCH board to enter into this
24 contract, didn't you?

1 MR. MILLER: Objection to form.

2 You may answer.

3 And again, you're saying you. Do you
4 mean Lifestyle Communities?

5 MR. SCHUMACHER: I do.

6 MR. MILLER: Okay. Sorry.

7 A. Yes.

8 Q. Mr. Fisher provided an offer to you
9 according to this email, didn't he?

10 A. Can you repeat the question?

11 Q. Mr. Fisher had made an offer to you
12 through Mr. Koon to acquire this property?

13 MR. MILLER: Objection to form. It's
14 not what the document says.

15 A. I don't know.

16 Q. Well, let's start again, then.

17 A. Yeah.

18 Q. In 2013 you made an offer to David
19 Fisher to acquire the UMCH property, you and LC
20 and you personally made that offer, right?

21 MR. MILLER: Objection to form.

22 You may answer.

23 A. Yes.

24 Q. And this email suggests that David

1 Fisher was going to sign a waiver of conflict of
2 interest so that he could continue to negotiate
3 for you and your company to acquire the UMCH
4 property?

5 MR. MILLER: Same objection.

6 A. Yes.

7 Q. Let me hand you what we've marked --
8 will mark as Exhibit...

9 MR. SILK: Six.

10 MR. SCHUMACHER: Six.

11 --0--

12 (Deposition Exhibit 6 marked.)

13 --0--

14 THE WITNESS: Okay.

15 BY MR. SCHUMACHER:

16 Q. This is the offer that you made to UMCH
17 through Mr. Koon, right?

18 A. Yes.

19 Q. And I don't expect you to understand or
20 know the details of the actual joint venture
21 agreement that you concluded with them, but you
22 would agree with me that Exhibit 6 is your idea
23 for the outline of what that agreement should
24 contain?

1 MR. MILLER: Objection to form.

2 A. I didn't prepare this.

3 Q. That's your name at the bottom, isn't
4 it?

5 A. It is. I'm sure one of our development
6 people prepared this.

7 Q. But you agree with me that this is
8 Michael DeAscentis's proposal or outline of a
9 proposal to Mr. Koon for entering into a joint
10 venture with UMCH?

11 A. Yes.

12 Q. How many of these types of deals have
13 you been involved in, Mr. DeAscentis?

14 MR. MILLER: Objection to form.

15 You may answer if you understand the
16 question.

17 A. How many development projects?

18 Q. Yes.

19 A. Hundreds.

20 Q. Hundreds. Can you explain to me what
21 Exhibit 6 outlines in terms of the financing of
22 this deal? Are you able to do that --

23 MR. MILLER: Objection --

24 Q. -- based upon your experience?

1 MR. MILLER: Objection to form.

2 A. I don't understand the question.

3 Q. Can you explain to me what Exhibit 6
4 contemplated in terms of the financial details
5 of a joint venture with UMCH to acquire and
6 develop this property?

7 A. That we would -- we would partner to
8 jointly develop it and split the sale proceeds.

9 Q. And how would you do that?

10 MR. MILLER: Objection to form.
11 Document speaks for itself.

12 A. At 7a it talks about how you -- do you
13 want me to read it?

14 Q. No. What do you refer to that paragraph
15 7 generally as? Do you have a name for that
16 type of financing?

17 MR. MILLER: Objection to form.

18 A. Profit split.

19 Q. Have you ever heard of a waterfall?

20 A. Oh, yes.

21 Q. Oh, you have.

22 MR. MILLER: Paul --

23 Q. Familiar with that term?

24 MR. MILLER: Paul, you just asked the

1 question.

2 MR. SCHUMACHER: Okay. I'm sorry.

3 MR. MILLER: He's answering your

4 questions --

5 A. I've heard of a waterfall.

6 MR. MILLER: -- in a much more measured

7 way than you're asking them.

8 Q. Is this a waterfall?

9 A. Yes.

10 Q. Thank you.

11 Your offer to UMCH also included

12 paragraph 5, didn't it?

13 A. Can you repeat the question?

14 Q. You knew in 2013 when you made this

15 offer that the property would have to be

16 successfully rezoned for up to 350 residential

17 units?

18 MR. MILLER: Objection to form.

19 You may answer.

20 A. Can you repeat the question again? I'm

21 sorry.

22 MR. SCHUMACHER: Julia, could you read

23 that back, please.

24 (Record read as requested.)

1 A. That's what this says.

2 Q. And you knew that, didn't you?

3 A. I don't recall at the time now.

4 Q. So as we sit here today involved in a
5 federal lawsuit that your company's filed, you
6 don't remember that in 2013 you were aware of
7 the fact that the property would have to be
8 rezoned. Is that what --

9 A. Yes.

10 Q. -- you're telling me?

11 Fine. Thank you.

12 A. I just didn't know the 350 units. You
13 said that.

14 Q. Oh.

15 A. I just don't remember that.

16 Q. Okay. But you did remember -- you do
17 know now and you knew then in 2013 that this
18 property would have to be rezoned for any number
19 of residential units.

20 MR. MILLER: Objection to form and asked
21 and answered.

22 Q. Right?

23 A. Yes.

24 Q. Thank you.

1 Do you know who MKSK is?

2 A. Yes.

3 Q. Who are they?

4 A. A local land planner.

5 Q. Do you use them?

6 A. I don't know.

7 Q. Who is Tom Brigdon?

8 A. Tom Brigdon is a local developer.

9 Q. Did you ever do any deals with Tom
10 Brigdon?

11 MR. MILLER: Objection to form.

12 You may answer.

13 A. We tried once.

14 Q. Didn't go?

15 A. No.

16 Q. That happens, right?

17 A. Yes.

18 Q. Do you recall telling him in 2014 that,
19 "Worthington's moving slow but in the right
20 direction as they hired MKSK as the planner and
21 our use is coming together"?

22 A. I don't remember that.

23 Q. Do you remember telling him generally
24 that you learned that the city hired MKSK as

1 their land use planner?

2 A. I don't remember telling Tom that.

3 MR. MILLER: Keep your voice up for the
4 record.

5 THE WITNESS: Oh, yeah. Sorry.

6 Q. So do you recall any time after this
7 2013 joint venture meeting with anyone from the
8 city of Worthington personally about trying to
9 obtain approvals for this development?

10 MR. MILLER: Objection to form.

11 A. Yes.

12 Q. When do you think -- when and with whom
13 do you recall meeting?

14 MR. MILLER: Same objections.

15 You may answer.

16 A. I don't recall when, but I met with
17 Matt -- Gleason, Greeson?

18 Q. Greeson.

19 A. -- Greeson several times.

20 Q. Why did you meet with Matt Greeson?

21 MR. MILLER: Objection to form.

22 You may answer.

23 A. City -- I think he was a city manager.

24 Q. What was the nature of your meeting with

1 him?

2 A. To understand how our plan needed to be
3 in accordance with the comprehensive plan that
4 they had developed. Typically we meet with
5 cities, we met with their representatives to
6 understand their plans.

7 Q. And did you advise him at the time that
8 it was your intent to build a number of
9 apartments and condos on the property?

10 MR. MILLER: Objection to form.

11 A. I don't recall. I don't recall.

12 Q. Is that typically what you would do
13 since you're in the business --

14 A. Yeah.

15 Q. -- of developing apartments?

16 A. Yes.

17 MR. MILLER: Just wait until he finishes
18 his question --

19 THE WITNESS: Okay.

20 MR. MILLER: -- before you answer.

21 Q. I'm sorry, the answer was yes?

22 A. Yes.

23 Q. When trying to develop this property,
24 did you have an intention in 2013 as to how many

1 residential units you needed to develop there in
2 order to make a profit?

3 MR. MILLER: Objection to form.

4 You may answer.

5 A. I don't remember.

6 Q. I want to be clear on this. You
7 personally and your company are a for-profit
8 company, right?

9 A. Correct.

10 Q. You want to make a profit. And your
11 business is developing primarily apartments and
12 residential units, correct?

13 A. Correct.

14 Q. And LC typically owns those residential
15 units, don't they, and rent them?

16 A. Yes.

17 Q. And you rent them through a different
18 company, don't you, an affiliate company?

19 MR. MILLER: Objection to form.

20 A. Yes.

21 Q. Do you also provide utility services for
22 those residential units in various locations?

23 A. Yes.

24 Q. Do you own a company that provides such

1 utility services?

2 A. Yes.

3 Q. Nationwide Energy Partners?

4 A. Yes.

5 Q. And you're the chief executive officer
6 of Nationwide Energy Partners?

7 A. Yes.

8 Q. And that company buys utility energy
9 products and resells it to apartments and condo
10 dwellers?

11 MR. MILLER: Objection to form and as to
12 relevance.

13 You may answer.

14 A. No.

15 Q. What does New Energy Partners do, then?

16 A. They're agent -- they're an agent for
17 property owners to manage their energy.

18 Q. In the joint venture that you entered
19 into with UMCH was UMCH to obtain profit from
20 the development as well?

21 A. Yes.

22 Q. And was LC or its affiliate companies
23 also going to profit from more than just the
24 rental on those units?

1 MR. MILLER: Objection to form.

2 A. I don't understand the question.

3 Q. Well, how does LC profit from
4 residential units?

5 A. By developing them and charging rent and
6 collecting it. Rental income.

7 Q. And your business model, though, is that
8 you develop the property, have the apartments or
9 residences built, and then you continue to own
10 them and rent them.

11 MR. MILLER: Objection to form.

12 Q. Right?

13 A. Sometimes.

14 Q. But that's -- that was the model --

15 A. That's the general.

16 Q. That's the model that you had in mind
17 here, isn't it?

18 A. Yes.

19 Q. And I don't believe you'd made any
20 decisions on whether you're going to utilize
21 Nationwide Energy Partners or a similar company
22 to manage the properties. Is that correct?

23 MR. MILLER: Objection to form. You're
24 talking about back in 2013 related to the offer

1 we saw?

2 MR. SCHUMACHER: Yes.

3 MR. MILLER: Same objection.

4 Q. No decision had been made?

5 A. Can you ask the question again?

6 Q. It was a bad question.

7 Let me just mark this exhibit, then, and
8 maybe you can answer the question that way.

9 ==0==

10 (Deposition Exhibit 7 marked.)

11 ==0==

12 THE WITNESS: Okay.

13 BY MR. SCHUMACHER:

14 Q. Have you had a chance to review
15 Exhibit 7?

16 A. Yes.

17 Q. And it's got LC00005850 at the bottom
18 right-hand corner?

19 A. Yes.

20 Q. This is a true and accurate copy of an
21 email you sent on April 23rd, 2015 to Brent
22 Miller?

23 MR. MILLER: Objection to form.

24 You may answer.

1 A. Yes.

2 Q. This is basically an outline of what you
3 were directing your people to do in order to
4 move this project forward?

5 A. Yes.

6 Q. You see where it says in the first
7 paragraph: Brent, since you're taking the lead
8 on this deal for all other things than zoning
9 approval -- you see that sentence?

10 A. Yes.

11 Q. Who was taking the lead on all other
12 things zoning approval?

13 MR. MILLER: Objection to form. At this
14 time?

15 Q. The day of this letter -- or this email,
16 yes.

17 A. Since you're taking lead on this deal
18 for all other things than zoning approval. I
19 don't know.

20 Q. You see on the paragraph two where you
21 wrote, I think we want to sell developed pads or
22 lots so we can control the overall development
23 and earn extra dollars on our side of the JV?
24 Do you see that?

1 A. Yes.

2 Q. What did you mean by that?

3 A. Part of our development -- part of our
4 business is buying and developing land and
5 selling it, and we would -- I think I
6 contemplated instead of just -- you know, we're
7 really not in the business of selling land.
8 We're in the business of developing land so we
9 would develop the lots and sell them.

10 Q. And how were you going to make extra
11 dollars on that side of the JV or the joint
12 venture?

13 A. We would split the land profit with
14 UMHC, and then we would put the money in to
15 develop the lots, and then we would get a return
16 on those extra development dollars, because the
17 lots are worth more developed than undeveloped.

18 Q. You also were going to share profits on
19 the OhioHealth portion of this deal with David
20 Fisher and apparently another developer?

21 MR. MILLER: Objection to form.

22 A. I don't remember, but that's what this
23 says.

24 Q. Do you know who the other developer was?

1 A. I don't.

2 Q. So David Fisher was going to participate
3 in the profits as well as you and OhioHealth?
4 I'm sorry, you and UMCH?

5 MR. MILLER: Objection to form.

6 You may answer.

7 A. Can you -- I'm sorry, can you repeat
8 that again?

9 Q. Apparently David Fisher was going to
10 share in the profits on the OhioHealth portion
11 of this joint venture?

12 A. Correct.

13 Q. He was also going to share in the
14 profits of some of the retail business, wasn't
15 he?

16 MR. MILLER: Objection to form.

17 You may answer.

18 A. I don't recall.

19 Q. Look at the second page of Exhibit 7
20 where it says retail/residential.

21 A. Yes, that's what it says.

22 Q. So who is the non-LC entity you're
23 referring to?

24 A. I don't know.

1 Q. But the idea was you were going to
2 create a non-LC entity who would own the retail
3 land in a joint venture with David Fisher,
4 right?

5 MR. MILLER: Objection to form.

6 You may answer.

7 A. I think own the retail, the actual
8 buildings.

9 Q. Right. You were going to do that with
10 David Fisher in a non-LC entity?

11 A. Yes.

12 Q. So you would create a -- you yourself
13 personally would create a different LC -- a
14 different legal entity and then share profits on
15 the retail buildings with David Fisher?

16 A. Yes.

17 Q. In addition -- well, you say, but the
18 ownership of the apartments will go with LEF.
19 You see that?

20 A. Yes.

21 Q. Who is LEF?

22 A. Lifestyle Equity Fund.

23 Q. That's one of LC's affiliate companies?

24 A. Yes.

1 Q. In other words, you own them?

2 A. I'm sorry?

3 MR. MILLER: Objection to form.

4 Q. Your company owns them?

5 A. LEF is a company that we own.

6 Q. So you were outlining this deal for
7 Brent so that they could go negotiate this deal
8 that you've outlined, right?

9 MR. MILLER: Objection to form.

10 You may answer.

11 A. Yes.

12 Q. You're the CEO?

13 A. Yes.

14 Q. You're giving direction to your
15 employees to go negotiate the deal outlined in
16 Exhibit 7?

17 A. Yes.

18 Q. And in addition you were also going to
19 benefit from flipping the two houses that were
20 on the north end of the site.

21 MR. MILLER: Objection to form.

22 You may answer.

23 Q. Isn't that what you wrote?

24 A. Yes.

1 Q. You didn't want to share that benefit
2 with UMCH. You wanted to keep that for
3 yourself?

4 A. Yes.

5 Q. Thank you.

6 Do you recall meeting with an
7 organization in 2015 called WARD?

8 A. I don't recall.

9 Q. Who's Betsy Rachel, R-E-C-H-E-L?

10 A. She used to be a personal accountant for
11 me.

12 Q. Did you make a presentation to this
13 group known as WARD about your proposal to
14 develop the UMCH property?

15 A. I don't remember.

16 --0--

17 (Deposition Exhibit 8 marked.)

18 --0--

19 THE WITNESS: Okay.

20 BY MR. SCHUMACHER:

21 Q. Have you had a chance to review
22 Exhibit 8?

23 A. Yes.

24 Q. Is this an email you sent to Ms. Rachel

1 on May 1st, 2015?

2 A. Yes.

3 Q. Do you recall making a presentation to
4 the city of Worthington outlining some of the
5 points that she then lists in the bottom of
6 page 1 of Exhibit 8 and page 2?

7 A. I don't.

8 Q. You'd agree that in May of 2015 the
9 nature of the proposal that you and LC were
10 making for this development was as listed in the
11 bottom of page 1 of Exhibit 8 and page 2,
12 wouldn't you?

13 A. Yes.

14 Q. And you'd agree that you did make
15 that -- the elements of that proposal known to
16 the city of Worthington when you met with them?

17 A. I don't know that -- I don't remember
18 meeting with them.

19 Q. Okay.

20 A. In this -- our company probably did. I
21 don't know whether -- I can't recall whether I
22 was there or not.

23 Q. Well, you'd agree that at least as of
24 May 1st, 2015 the intent of LC was to propose a

1 mixed use development on this site of 571 living
2 units consisting of 350 Lifestyle Community
3 rental apartments, 200 cottage townhouses, 21
4 estate homes, and a mix of office, retail,
5 apartment buildings along High Street with
6 additional details as listed in this document?

7 A. Yes.

8 Q. And you -- at the time you were making
9 that proposal you were getting significant
10 pushback from the members of the Worthington
11 community, weren't you?

12 MR. MILLER: Objection to form.

13 You may answer.

14 A. In this meeting?

15 Q. At this time. As of May of 2015 you
16 were already getting pushback from the citizens
17 of Worthington about the nature of your
18 proposal --

19 MR. MILLER: Same objections.

20 Q. -- weren't you?

21 MR. MILLER: You may answer.

22 A. Yes.

23 Q. You knew zoning was going to be
24 difficult, or rezoning, right?

1 MR. MILLER: Objection to form.

2 A. No.

3 Q. So you weren't concerned that it was
4 going to be difficult to get the property
5 rezoned because of the pushback from the
6 community. Is that what you're telling me?

7 A. We always get pushback from neighbors
8 and the community and that concerns us.

9 Q. But in this case you knew that there was
10 a large number of citizens of the city of
11 Worthington who were opposed to the nature of
12 the development that you'd outlined on
13 Exhibit 8.

14 MR. MILLER: Objection to form.

15 Q. Right?

16 A. Can you repeat the quest -- was that a
17 question?

18 Q. Yes.

19 A. Can you repeat it, please?

20 MR. SCHUMACHER: Julia, could you repeat
21 it because I'm coughing.

22 (Record read as requested.)

23 A. Yes.

24 Q. You knew that zoning was going to be a

1 bitch, right?

2 MR. MILLER: Objection to form.

3 A. No.

4 Q. Those are your words, aren't they?

5 A. I don't recall. I could have said that.

6 Sure. I mean, I don't recall saying it.

7 Q. You don't recall -- okay. Let's mark
8 this as Exhibit 9.

9 --0--

10 (Deposition Exhibit 9 marked.)

11 --0--

12 THE WITNESS: Okay.

13 BY MR. SCHUMACHER:

14 Q. So on May 6, 2015 -- on that date you
15 had not -- you and your company, and Brent and
16 Chase Miller had not made any formal
17 presentation to the community about this
18 proposal, had they?

19 MR. MILLER: Objection to form.

20 A. I don't recall.

21 Q. Okay. Well, let me tell you that the
22 meeting at the Worthington -- the WEC center
23 occurred on June 29th of 2015. All right? And
24 I can show you that document later.

1 A. Okay. June 29th?

2 Q. Yes. You remember the meeting, right?
3 we talked about it earlier. You didn't think --
4 you didn't know if you were there.

5 A. Well, I went to a meeting, but I don't
6 know if it was a WARD meeting or a town hall
7 meeting or a resident meeting.

8 Q. Okay. We'll get to that.

9 A. Okay.

10 Q. Were you ever at a meeting where 300,
11 350 citizens were present?

12 A. Yes.

13 Q. Okay. And do you recall that there was
14 significant opposition to your proposal, LC's
15 proposal?

16 A. Yes.

17 Q. But even before that meeting occurred,
18 you knew that zoning was going to be difficult,
19 getting rezoned?

20 MR. MILLER: Objection to form.

21 You may answer.

22 A. Yes. That's what this email says.

23 Q. And your employee Brent Miller asked if
24 you were concerned about anything in WARD's

1 comments or on Duffy's Facebook blog. You see
2 that?

3 A. Yes.

4 Q. So apparently you looked at Duffy's
5 Facebook blog, didn't you?

6 A. That's what this says. I don't recall.

7 Q. You were concerned, right?

8 MR. MILLER: Objection. Asked and
9 answered.

10 You may answer.

11 A. I was concerned with the residents.

12 Q. What did you write?

13 A. Yes, concerned. Zoning is going to be a
14 bitch.

15 Q. Because you knew it was going to be very
16 difficult to overcome citizens' opposition to a
17 very dense apartment complex on the greenspace
18 that remained in Worthington, Ohio?

19 MR. MILLER: Objection to form.

20 A. I was concerned with getting the
21 residents on board.

22 Q. Right. In 2015, right?

23 A. Yes.

24 Q. Now, do you know if you were at this

1 meeting that occurred on June 29th, 2015 where
2 350 residents appeared, and Brent Miller, Chase
3 Miller, and David Fisher made a presentation to
4 the community?

5 A. I was there for a period -- brief period
6 of time.

7 Q. All right. Do you recall receiving from
8 Worthington city council a letter following that
9 meeting?

10 A. No.

11 ==0==

12 (Deposition Exhibit 10 marked.)

13 ==0==

14 BY MR. SCHUMACHER:

15 Q. Have you had a chance to review
16 Exhibit 10?

17 A. Yes.

18 Q. You'd admit that you received a copy of
19 the letter attached on the second page of
20 Exhibit 10 on or about July 16th, 2015?

21 A. Yes.

22 Q. You see on the second page that's the
23 letter?

24 A. Yes.

1 Q. Do you have the conceptual plans that
2 were submitted at the June 29th, 2015 meeting in
3 front of the public?

4 MR. MILLER: Objection to form and use
5 of the word you.

6 A. I don't have the plans.

7 Q. Does LC?

8 A. I'm sure they do.

9 Q. Do you recall looking at it in
10 preparation for your deposition?

11 A. Yes.

12 Q. Okay. And it did propose the same
13 number of residential and commercial buildings
14 that we talked about earlier, didn't it?

15 MR. MILLER: Objection to form.

16 A. I don't recall.

17 Q. Well, the document would speak for
18 itself, wouldn't it?

19 MR. MILLER: Same objection.

20 A. I mean, if I can see the document, I can
21 probably --

22 Q. Sure. Well, let's finish this first.
23 We'll get it.

24 The -- you also obtained a copy of the

1 minutes of the meeting that was held on
2 June 29th, 2015. When I say you, I mean LC.

3 MR. MILLER: Objection to form.

4 You may answer if you know.

5 A. I don't know.

6 Q. You said you were present for part of
7 the meeting?

8 A. Yes.

9 Q. And you'd agree with me that the
10 majority of the people present were not in favor
11 of the scope of the proposal that you'd made,
12 right?

13 MR. MILLER: Objection to form.

14 A. Yes.

15 Q. And city council reiterated that to you
16 in this letter marked -- second page of
17 Exhibit 10, right?

18 A. Reiterated? I don't understand the
19 question.

20 Q. They told you about the same thing.
21 They said there was opposition to your proposal,
22 and they suggested that you engage in a
23 comprehensive, inclusive community outreach
24 process to listen and respond to the interests

1 of Worthington citizens --

2 MR. MILLER: Objection to form --

3 Q. -- didn't they?

4 MR. MILLER: -- and characterization of
5 the document which speaks for itself. They also
6 say they remain committed to the principles
7 outlined in the comprehensive plan, and the
8 comprehensive plan provides a framework for
9 development. They do not say in here that
10 there's significant opposition.

11 MR. SCHUMACHER: Thank you, Counselor.

12 Q. The city of Worthington was telling you
13 on July 15th, 2015 to continue a comprehensive,
14 inclusive community outreach process to listen
15 and respond to the interests of Worthington
16 citizens, Mr. DeAscentis, didn't they?

17 A. Yes.

18 Q. And you essentially did nothing for the
19 next four years. Isn't that right?

20 MR. MILLER: Objection.

21 A. No.

22 Q. What did you do after this letter to
23 engage the citizens and listen to the interests
24 of Worthington citizens?

1 A. I don't recall specifically what we did.

2 Q. Okay. So you knew that zoning was going
3 to be a bitch, and you knew that the citizens
4 that you heard at the meeting were opposed to
5 the density of your proposal, and you received a
6 letter on July 15th from the city of Worthington
7 essentially saying that, and you don't recall
8 what you did to respond.

9 MR. MILLER: Objection.
10 Mischaracterizes the exhibit --

11 Q. Is that what you're saying?

12 MR. MILLER: -- prior testimony.

13 A. I don't know they were -- they were --
14 they were concerned with the density.

15 Q. Among other things.

16 A. Yeah. The one I recall -- the one
17 conversation I recall is a resident stood up and
18 said apartments bring low income black people
19 and we don't want those people in Worthington.
20 That's when I got up and left.

21 Q. Okay. But the -- nonetheless, the city
22 was encouraging you to engage the citizens of
23 Worthington about your project?

24 A. Yes.

1 Q. Okay. You'd agree that the citizens at
2 the meeting did raise issues, including creating
3 an abundant greenspace and parkland, right?

4 A. Yes.

5 Q. Dealing with stormwater, right, that was
6 raised?

7 A. I don't recall.

8 Q. The letter suggests it, doesn't it?

9 MR. MILLER: Objection to form. You
10 asked him if he knew that.

11 MR. SCHUMACHER: well, he just --

12 MR. MILLER: He said he didn't recall.

13 MR. SCHUMACHER: -- said he didn't.

14 MR. MILLER: The letter says that.

15 MR. SCHUMACHER: The letter says it.

16 MR. MILLER: That's a different
17 question.

18 A. I remember them asking about parkland
19 space in the meeting, but I don't remember
20 stormwater.

21 Q. Do you remember comments about the
22 impact of traffic?

23 A. Yes.

24 Q. Do you remember comments about the

1 affects on schools?

2 A. No.

3 Q. Do you recall comments about the mix of
4 housing types and the interest of empty-nesters
5 and elderly?

6 A. Yes.

7 Q. Do you recall comments about the height
8 of buildings?

9 A. No.

10 Q. Given all of this, what did you do after
11 2015 to engage the community and have dialogue
12 with the community in order to try and get your
13 proposal accepted by the community?

14 MR. MILLER: Objection to form.

15 A. I don't know the timing. I mean, I went
16 to several meetings with people in the community
17 at the direction of Matt Greeson's request of me
18 to do that.

19 Q. who? when?

20 MR. MILLER: Objection to form.

21 A. I don't -- I don't know the dates.

22 Q. will you be able to tell us at trial
23 what efforts you made from July of 2015 until
24 you made your application formally to engage the

1 community?

2 MR. MILLER: Objection to form.

3 You may answer if you understand the
4 question.

5 A. Yes.

6 Q. What efforts did you make?

7 A. I met with some constituents in
8 Worthington. I remember meeting with Bob
9 Larrimer.

10 Q. Bob?

11 A. Larrimer. It's someone that Matt
12 Greeson asked me to meet with.

13 Q. Did he own a home?

14 A. Yes.

15 Q. Anyone else? You met with Bob Larrimer.

16 A. I met with -- I met with some residents
17 on Evening Street. I can't remember who they
18 were. That was a street behind the property.

19 Q. Did you conduct any surveys of the
20 residents of the city of Worthington?

21 MR. MILLER: Objection to form.

22 A. I didn't.

23 Q. Did your company do that?

24 A. I don't know.

1 MR. SCHUMACHER: Let's mark this as
2 Exhibit 11 are we at?

3 COURT REPORTER: Yes.

4 --0--

5 (Deposition Exhibit 11 marked.)

6 --0--

7 THE WITNESS: Okay.

8 BY MR. SCHUMACHER:

9 Q. Have you had a chance to review
10 Exhibit 11?

11 A. Yes.

12 Q. Is this a true and accurate copy of an
13 email that David Fisher sent to Cyndy Garn and a
14 number of other people, including you, on
15 October 14th, 2015?

16 A. Yes.

17 Q. Did Lifestyle Communities receive the
18 city council's statement regarding the UMCH
19 development that was adopted on Monday,
20 October 12th, 2015?

21 MR. MILLER: Objection to form.

22 A. I don't know.

23 Q. You see the LC00019416 --

24 A. Yes.

1 Q. -- in the bottom right corner?

2 Do you understand that to be a document
3 produced by your lawyers in this case as one
4 that was from Lifestyle Communities Limited?

5 A. Are you asking me if we produced this?

6 Q. Yes.

7 A. I don't know.

8 Q. well, you're not denying that you were
9 aware that your company received this
10 document --

11 MR. MILLER: Objection to form.

12 Q. -- are you?

13 A. No.

14 Q. At this point Lifestyle Communities had
15 not submitted any formal application for
16 rezoning the property, had they?

17 MR. MILLER: Objection to form.

18 October of 2015?

19 A. Can you repeat the question?

20 MR. SCHUMACHER: Julia, please.

21 (Record read as requested.)

22 A. I don't know.

23 ==0==

24 (Deposition Exhibit 12 marked.)

23 Q. Have you had a chance to review
24 Exhibit 12?

1 A. Yes.

2 Q. This appears to be an email that you
3 sent to yourself on December 15th, 2016. Do you
4 see that?

5 A. Yes.

6 Q. Was this a draft of something you were
7 going to send to David and Bill?

8 A. I don't remember.

9 Q. Is David David Fisher?

10 A. Probably, yes.

11 Q. And who would Bill be?

12 MR. MILLER: Objection to form.

13 A. Bill? Somebody with UMHC. I'm sure.

14 It might have been Bill Friedman, not Denny
15 Friedman. Bill -- Bill's somebody that worked
16 at UMHC, I think. I'm not certain.

17 Q. Is it fair to say that this draft email
18 contains your thoughts about further negotiation
19 for this deal with UMCH?

20 A. Yes.

21 Q. You are assuming a 10-year zoning
22 battle.

23 MR. MILLER: Objection to form.

24 Q. Is that right?

1 A. No.

2 Q. What did you mean by that comment, I'm
3 going to -- I'm going in to this assuming a
4 10-year battle?

5 A. Well, that's -- I was negotiating price
6 with UMHC saying you guys have been holding it
7 for a long time. It took you 10 years; so...

8 Q. Ten years to do what?

9 A. Well, they had a couple developers prior
10 to me when there was no zoning in place.

11 Q. When there was what?

12 A. No zoning in place.

13 Q. Who were those developers?

14 A. I think it was Pizzuti was one, I think
15 Frank Kass was the other one that tried to buy
16 it.

17 Q. So you were aware there were other
18 developers who had attempted to buy the property
19 and obtain rezoning for a different kind of
20 development.

21 MR. MILLER: Objection to form.

22 Q. We can agree on that?

23 A. They didn't obtain zoning.

24 Q. But they had to and they abandoned those

1 plans?

2 MR. MILLER: Objection to form.

3 You may answer.

4 A. Yes.

5 Q. And you knew that?

6 A. Yes.

7 Q. That's why you were offering what you
8 considered to be a very high price per acre for
9 the property?

10 A. No.

11 Q. You knew you were going to have to fight
12 this zoning battle, right?

13 MR. MILLER: Objection to form.
14 Mischaracterizes the document and prior
15 testimony.

16 A. No. That was a pricing strategy to get
17 the price lowered.

18 Q. Okay. So when you -- when you said
19 that's an extremely high price for unzoned and
20 unentitled land, you meant that to be a
21 negotiating tactic, right?

22 MR. MILLER: Objection to form.

23 You may answer.

24 A. Yes.

1 Q. Because, again, you knew that there was
2 going to be a lot of work to get this rezoned
3 given what you'd already learned about the
4 community pushback?

5 MR. MILLER: Objection to form.
6 Mischaracterizes prior testimony.

7 A. No.

8 Q. That's not right? You didn't know that
9 there was community pushback? We just talked
10 about that.

11 MR. MILLER: Objection to form.

12 A. I knew I would get it zoned.

13 Q. Okay. But you knew there was community
14 opposition to the plan, didn't you?

15 A. There's always community oppositions to
16 plans.

17 Q. And there continued to be community
18 opposition to the plan throughout the course of
19 this matter, didn't it?

20 MR. MILLER: Objection to form.

21 A. Yes.

22 Q. You never were able to obtain community
23 buy-in for the proposal that you'd made --

24 MR. MILLER: Objection to form.

1 Q. -- were you?

2 MR. MILLER: Sorry, Paul. Objection.

3 You may answer if you understand the
4 question. I don't know what community buy-in
5 means.

6 A. I don't know.

7 Q. You don't -- you're not aware of the
8 fact that you were never able to get community
9 buy-in?

10 A. Some of the people in the community.

11 Q. And what efforts did you do to assess
12 the people in the community, the voters in the
13 community to determine if they would accept your
14 proposal?

15 A. I don't know.

16 Q. You don't know. We'll get to that.

17 THE VIDEOGRAPHER: Got about five
18 minutes.

19 MR. SCHUMACHER: Yeah. It's a good time
20 to break, then.

21 MR. MILLER: Okay.

22 (Recess taken.)

23 THE VIDEOGRAPHER: We're back on the
24 record.

1 BY MR. SCHUMACHER:

2 Q. Mr. DeAscentis, just before the break
3 you said I knew I would get it zoned. You
4 recall saying that?

5 A. Yes.

6 Q. Just a minute ago?

7 A. Yes.

8 Q. Thank you.

9 So you were aware that you would have to
10 also survive a referendum if one were brought by
11 the citizens of the city of Worthington, right?

12 MR. MILLER: Objection to form.

13 A. Yes.

14 Q. So you must have information that make
15 you certain that you would survive a referendum.
16 Is that right?

17 MR. MILLER: Same objection.

18 A. I mean, in our experience those very
19 rarely are successful just because of the number
20 of residents in the community, and the math, and
21 the ballots, and so I wasn't worried about the
22 referendum.

23 Q. How many residents are there
24 approximately in the city of Worthington, do you

1 know?

2 A. I don't.

3 Q. I've been told 14,000. Does that sound
4 right?

5 A. I don't know.

6 Q. I don't either. How many registered
7 voters are there in the city of Worthington, do
8 you know that?

9 A. I don't.

10 Q. And registered voters are what we're
11 talking about when we're talking about voting on
12 a referendum, correct?

13 MR. MILLER: Objection to form.

14 A. I don't know.

15 Q. So my question's a little different.
16 Even though you've had experience with
17 referendums, in this case you must have
18 information that make you certain that you would
19 survive a referendum by the citizens of the city
20 of Worthington. Is that right?

21 MR. MILLER: Objection to form.

22 A. No.

23 Q. You don't have any information? It's
24 just a guess?

1 MR. MILLER: Objection to form.

2 Mischaracterizes prior testimony.

3 A. Yeah.

4 Q. Which is it?

5 A. I've never been involved in a referendum
6 in all the developments we've done so it wasn't
7 a concern for me.

8 Q. Okay. Are you telling me that you don't
9 have information that you are relying upon to be
10 sure that you would survive a referendum?

11 MR. MILLER: Objection to form. Other
12 than the information that he just relayed to
13 you?

14 MR. SCHUMACHER: His experience? He
15 said he had no experience with a referendum.
16 Let me withdraw the question.

17 BY MR. SCHUMACHER:

18 Q. Do you have any information or did you
19 develop any information to advise you, or your
20 companies, or your affiliates, or the people you
21 partnered with on this deal to determine if you
22 could survive a referendum by the voters of the
23 city of Worthington?

24 MR. MILLER: Same objections.

1 A. I did not.

2 Q. Nothing?

3 MR. MILLER: Same objections.

4 A. I did not.

5 Q. You and your companies did nothing?

6 A. I don't know what the companies did.

7 Q. Okay. So you would agree with me, then,
8 that if the citizens of the city of Worthington
9 put this issue on the ballot after a successful
10 rezoning, you could lose?

11 MR. MILLER: Objection to form. Calls
12 for speculation. Mischaracterizes prior
13 testimony. He said he wasn't worried about a
14 referendum.

15 MR. SCHUMACHER: It certainly does call
16 for speculation.

17 Q. You don't know if you'd survive a
18 referendum, do you?

19 MR. MILLER: Objection to form.

20 A. I don't know.

21 Q. Thank you.

22 when did you first employ Tom Hart to be
23 your lawyer to obtain rezoning in this case?

24 MR. MILLER: Objection to form. You,

1 your.

2 Q. You don't remember?

3 MR. MILLER: Ignores prior testimony.

4 Q. All right. Let's --

5 MR. MILLER: Can you be a little more
6 precise?

7 Q. Let's be clear. When I say you, I'm
8 referring to you as the chief executive officer
9 of Lifestyle Communities Limited and its 50-some
10 affiliated companies. You understand me?

11 A. Yes.

12 Q. Thank you.

13 when did you first employ Tom Hart to
14 achieve rezoning of this property?

15 A. I don't know.

16 MR. MILLER: Same objection.

17 Q. You don't know?

18 A. I don't know.

19 Q. Do you have the information within your
20 companies?

21 A. I'm sure.

22 Q. You do know that Attorney Hart is the
23 one who made the application to the city of
24 Worthington, don't you?

1 A. I don't know.

2 Q. You do know that your attorney or
3 general counsel Bo Brownlee made presentations
4 at both the City of Worthington Municipal
5 Planning Commission and the City of Worthington
6 City Council, don't you?

7 A. Yes.

8 Q. Thank you.

9 Did you meet with any councilmembers at
10 any time during your quest to obtain this
11 rezoning?

12 MR. MILLER: Objection to form.

13 You may answer.

14 A. Yes.

15 Q. Did you ever meet with David Robinson?

16 A. Yes.

17 Q. On how many occasions?

18 A. I recall one time.

19 Q. Do you remember where the meeting was?

20 A. Rusty Bucket.

21 Q. Do you remember who else was present?

22 Was it just the two of you, do you recall?

23 A. No. There was three or four people
24 there.

1 Q. Three or four people from your
2 organizations or --

3 A. No, three or four people at the table.
4 I remember sitting at the table. I don't -- I
5 don't know for sure who was there.

6 Q. Do you recall the conversation you had
7 directly with Mr. Robinson?

8 A. Yeah. David was very negative about our
9 company's product and our quality.

10 Q. Do you know when this meeting occurred?

11 A. I don't.

12 Q. In relation to your application do you
13 know when it occurred?

14 A. I don't.

15 Q. Would you agree with me that David
16 Robinson has always been against a dense
17 apartment complex on this property?

18 MR. MILLER: Objection to form.

19 A. I don't know.

20 Q. As long as you've known of him has it
21 been your understanding that he's been
22 anti-development of this property as an
23 apartment complex?

24 MR. MILLER: Same objection.

1 A. Yes.

2 Q. Did you know him or speak to him before
3 he got on council?

4 MR. MILLER: Objection to form.

5 You may answer.

6 Q. If you know.

7 A. I don't know --

8 MR. MILLER: You said did you know him
9 or speak to him.

10 A. I don't know when I met with him whether
11 he was on council or not. I don't know.

12 Q. Has Lifestyle Communities or any of its
13 affiliate companies or you personally
14 contributed to the campaign of any city of
15 worthington councilmember from 2013 to the
16 current time?

17 A. I don't --

18 MR. MILLER: Objection to form.

19 You may answer to the extent you know.

20 A. I don't know.

21 Q. How would you find out if your company's
22 made such contributions?

23 MR. MILLER: The companies themselves?

24 MR. SCHUMACHER: Yes.

1 MR. MILLER: You asked about companies
2 and individuals.

3 Q. You've got 50 affiliate companies or
4 more.

5 A. I'd probably go talk to one of our
6 lawyers.

7 Q. Which lawyer? Mr. Falk?

8 A. No, he wouldn't know.

9 Q. An in-house lawyer or outside lawyer?

10 A. In-house lawyer, yeah.

11 Q. Who is Yaromir Steiner?

12 A. He is a mixed use developer manager.

13 Q. How long have you known him?

14 A. Maybe 15 years.

15 Q. He's a successful developer in your
16 opinion?

17 MR. MILLER: Objection to form.

18 You may answer.

19 A. I don't -- I don't really have an
20 opinion about him as a successful developer.

21 Q. Do you recall proposing an agreement
22 with him where you would work together to try to
23 develop this property?

24 A. Yes.

1 Q. Did you actually propose a joint venture
2 of some kind?

3 A. I think he proposed -- I think he
4 proposed something to me.

5 Q. Did that ever come to fruition with him?

6 A. For a while, and then he decided not to
7 proceed.

8 Q. Did he tell you why?

9 A. I don't recall.

10 Q. Do you recall him telling you that it
11 would take a six month -- six months of intense
12 effort to build a consensus on a plan in order
13 to get the city to approve the zoning request?

14 MR. MILLER: Objection to form.
15 You may answer.

16 A. I don't recall him saying that.

17 Q. Okay. You don't recall discussing
18 anything like that with him?

19 A. well, I remember talking to him about
20 being -- the whole -- the overall project and
21 his role and using his expertise.

22 Q. Did you share with him your frustration
23 about the pushback that you'd been getting from
24 citizens of the city of Worthington?

1 MR. MILLER: Objection to form.

2 You may answer.

3 A. I don't remember telling him
4 specifically my opinion.

5 Q. Do you recall him telling you that it
6 may or may not take a referendum?

7 MR. MILLER: Objection to form.
8 what may or may not take a referendum?

9 Q. Getting the zoning approved --

10 A. No.

11 Q. -- for your proposal that forms the
12 basis of this lawsuit that you brought.

13 MR. MILLER: Objection to form.

14 A. I don't remember him telling me that.

15 Q. Okay.

16 MR. MILLER: I believe lunch is served
17 whenever you're at an appropriate stopping
18 point.

19 MR. SCHUMACHER: Okay. Let's do it.

20 MR. MILLER: You sure?

21 MR. SCHUMACHER: Sure.

22 THE VIDEOGRAPHER: Off the record.

23 (Recess taken.)

24 THE VIDEOGRAPHER: Okay. Back on the

1 record.

2 BY MR. SCHUMACHER:

3 Q. Mr. DeAscentis, do you try to keep
4 abreast of the real estate developments in
5 central Ohio?

6 A. Not much central Ohio anymore because
7 most of our work's down south.

8 Q. Are you familiar with the village -- is
9 it the Village of Powell?

10 A. Yes. I used to live there.

11 Q. You familiar with the referendum attempt
12 that was put up in the Village of Powell?

13 MR. MILLER: Objection to form and
14 vague.

15 A. No.

16 Q. Never heard of it?

17 A. A referendum attempt?

18 Q. Uh-huh.

19 A. (Shakes head).

20 MR. SCHUMACHER: What exhibit number are
21 we at, Julia?

22 COURT REPORTER: Thirteen.

23 --0--

24 (Deposition Exhibit 13 marked.)

1 --0--

2 BY MR. SCHUMACHER:

3 Q. Have you had a chance to review
4 Exhibit 13?

5 A. Yes.

6 Q. Have you ever seen Exhibit 13 before?

7 A. Yes.

8 Q. Did you -- is this your handwriting on
9 the document?

10 A. No.

11 Q. Did you create the document?

12 A. No.

13 Q. Does this document provide a flowchart
14 for the deal that formed the basis of the
15 lawsuit that you filed against the city of
16 Worthington?

17 MR. MILLER: Objection to form.

18 A. Can you repeat the question? I'm sorry.

19 Q. This is the deal that you were -- it's a
20 flowchart of the deal that you were presenting
21 with your application to rezone the property at
22 UMCH in the city of Worthington.

23 MR. MILLER: Objection to form.

24 Mischaracterizes the document. I don't see a

1 deal flow here. I see entities.

2 A. This is a chart of the entity that owns
3 the land.

4 Q. Okay. And if I -- can you help me
5 interpret the document?

6 MR. MILLER: Objection to form.

7 Q. Let's start at the top.

8 A. Yeah, that's me.

9 Q. So you are the -- we talked about this
10 earlier.

11 A. Yep.

12 Q. You were the guarantor --

13 A. Yeah.

14 Q. -- of a bank loan of \$6.55 million to
15 fund this purchase, correct?

16 A. Yes.

17 Q. And you --

18 MR. MILLER: And let's wait until -- so
19 the record is clear -- until he finishes his
20 question --

21 THE WITNESS: Okay.

22 MR. MILLER: -- before you begin your
23 answer.

24 Q. And you're also a hundred percent member

1 of LY Worthington Limited, an Ohio limited
2 liability company. You see that?

3 A. Yes.

4 Q. And may I interpret it correctly that
5 you personally own LY Worthington Limited?

6 MR. MILLER: Objection to form.

7 You may answer.

8 A. I'm not sure.

9 Q. Okay. What is your understanding as the
10 chief executive officer of Lifestyle Communities
11 of this document?

12 MR. MILLER: Objection to form.

13 A. Well, this document would assume that I
14 owned a hundred percent of LY Worthington and
15 that entity owns a hundred percent of
16 Worthington Campus, LLC.

17 Q. And Worthington Campus, LLC is one of
18 the Plaintiffs in this lawsuit, right?

19 A. Yes.

20 Q. They're the owner of the property -- one
21 of the owners of the property, right?

22 A. I'm not for sure which entity owns the
23 property.

24 Q. Is this a private deal that you've made

1 as Michael DeAscentis II or is this a deal that
2 you're making on behalf of Lifestyle Communities
3 Limited --

4 MR. MILLER: Objection --

5 Q. -- or one of its affiliate companies?

6 MR. MILLER: Sorry. Objection to form.

7 You may answer the question.

8 A. Well, sometimes I take ownership to
9 entity -- parts of projects that are a component
10 of some of the larger mixed use developments
11 that we do. So sometimes the entities are owned
12 by me. Sometimes the entities are owned by
13 Lifestyle Communities and those other 50
14 entities.

15 Q. Well, in the case of the property that's
16 located on High Street in Worthington, Ohio,
17 what is your role in that deal?

18 A. I'm the owner.

19 Q. Okay. So this is Michael J. DeAscentis
20 II's deal at the end of the day, isn't it?

21 MR. MILLER: Objection to form. It
22 mischaracterizes prior testimony.

23 A. I own the property.

24 Q. Right. Right. Whether we're -- as we

1 follow this flowchart, whether we look at all
2 these different corporate entities, at the end
3 you're the person who is holding the bag, so to
4 speak?

5 MR. MILLER: Objection to form. I don't
6 understand that question. I'm not sure how you
7 can answer it.

8 MR. SCHUMACHER: You can object all you
9 want, Mr. Miller.

10 A. I don't understand holding the bag. I
11 mean, sometimes I own real estate through LC
12 entities, sometimes I own real estate
13 individually. In this instance I owned it
14 individually.

15 Q. All right. So this lawsuit is your
16 lawsuit, isn't it?

17 MR. MILLER: Objection to form.
18 Lifestyle Communities is a Plaintiff and a
19 developer of the property.

20 Q. As is Worthington Campus, LLC of which
21 you're a hundred percent owner. Didn't we
22 establish that?

23 A. Yes.

24 Q. All right. So putting all the legal

1 legalities aside, at the end of the day this is
2 your lawsuit, Mr. DeAscentis, that you filed
3 against the city of Worthington, right?

4 MR. MILLER: Objection to form.

5 A. Yes.

6 Q. It's your money that was invested into
7 this deal, right?

8 A. Yes.

9 Q. What do you project to earn from this
10 deal?

11 MR. MILLER: Objection to form. And
12 here -- you keep saying you. I mean, Lifestyle
13 Communities is involved in the deal. Lifestyle
14 Communities is the applicant and the developer.
15 Which do you want to know?

16 MR. SCHUMACHER: Joe, he just testified
17 that this is his deal. You didn't hear him say
18 that?

19 MR. MILLER: He testified that he's the
20 owner of the land through --

21 MR. SCHUMACHER: Okay.

22 MR. MILLER: -- Worthington Campus, LLC.

23 Q. All right. If you could --

24 MR. MILLER: If you want to understand

1 the deal and how this works, you can ask him
2 that. If you want to mischaracterize his
3 testimony, that's not appropriate.

4 MR. SCHUMACHER: Your Honor, we move to
5 strike the comments of counsel.

6 Julia, can you read back my last
7 question for the witness.

8 (Record read as requested.)

9 A. Do you want me to answer that?

10 Q. Yes.

11 A. Between the multi-family, and the
12 residential, and the commercial between me and
13 the company, you know, we projected around
14 \$350 million would be the value that we could
15 create.

16 Q. Does that include submetering the
17 apartments for electricity and other utilities?

18 A. No.

19 MR. MILLER: Objection to form and
20 relevance.

21 A. No.

22 Q. I'm sorry?

23 A. No.

24 Q. But you could also do that as well?

1 A. I'm not sure.

2 Q. There were over 300 apartments in every
3 proposal that you've made in this particular
4 project, haven't there been?

5 A. Yes.

6 Q. And your companies have often submetered
7 electricity and other utilities through other
8 companies such as the one we talked about,
9 Nationwide Energy that you're the CEO of, right?

10 MR. MILLER: Same objections.

11 A. I am the CEO of that company, but
12 there's very specific regulations related to
13 utility service. We service 60,000 apartments
14 across three other states that we don't own. So
15 it's -- it's not clear that you could do that in
16 Worthington. I don't know if you could do that
17 in Worthington.

18 Q. But you do it in other places, don't
19 you?

20 MR. MILLER: Asked and answered.

21 A. Yes.

22 Q. And what you do is you buy utility
23 services like electricity and you mark it up to
24 the people that you rent those apartments to,

1 don't you?

2 A. No.

3 Q. Okay. That's not what you do?

4 A. No.

5 Q. All right. Do you make money on the
6 utility that you provide to those apartment
7 owner -- or renters?

8 MR. MILLER: Objection to form as to
9 relevant. I assume you're moving on soon. This
10 has nothing to do with the lawsuit.

11 A. Are you asking me as NEP? Are you
12 asking me as LC?

13 Q. NEP.

14 A. Yes.

15 Q. You knew that the city of Worthington
16 both through the citizen comment that you've
17 heard yourself as well as the feedback you've
18 gotten from government and others that
19 residences for empty-nesters and seniors was
20 desired at this particular property, right?

21 MR. MILLER: Objection to form.

22 A. Yes.

23 Q. And so if Nationwide Energy were able to
24 get involved in this project down the road, you

1 would be able to upcharge those citizens for
2 their utility services, wouldn't you?

3 MR. MILLER: Objection to form and
4 relevance.

5 A. No.

6 Q. No?

7 A. No.

8 Q. You wouldn't take the opportunity to
9 upcharge those senior residents like you do in
10 other communities?

11 MR. MILLER: Paul, this has nothing to
12 do with the lawsuit. I don't know what points
13 you think you're scoring. Nationwide Energy
14 Partners is a public utility in full conformity
15 with the law of the state of Ohio and other
16 states. I've been indulgent here. It has
17 nothing to do with this lawsuit. How long are
18 you going to spend on Nationwide Energy
19 Partners?

20 MR. SCHUMACHER: Are you finished?

21 MR. MILLER: How long are you going to
22 spend on Nationwide Energy Partners?

23 MR. SCHUMACHER: I'd like an answer to
24 my question when you're done with your speaking

1 objection. Are you done?

2 MR. MILLER: I don't get an answer to my
3 question. I mean, this is a discovery
4 deposition. I've afforded you latitude. This
5 is getting ridiculous, because you're getting
6 mired down in an entity and submetering that has
7 nothing to do with this lawsuit. So I'm asking
8 you to move on quickly. Otherwise, we will just
9 cut off the questioning. He's here to answer
10 your questions about this lawsuit.

11 MR. SCHUMACHER: Could be two pages.
12 Julia, could you read back my actual
13 question so I can get an answer and move on.

14 (Record read as requested.)

15 A. No.

16 Q. Thank you.

17 You said earlier before lunch that you
18 attended a couple of or a few meetings of
19 residents in the city of Worthington?

20 A. Yes.

21 Q. Do you recall meeting with an
22 organization referred to as Building
23 Worthington's Future or BWF?

24 A. Yes.

1 Q. BWF was an organization that was in
2 favor of development in the city of Worthington?

3 MR. MILLER: Objection.

4 You may answer if you know.

5 A. Yes.

6 Q. Can you take a look at a document we'll
7 mark as Exhibit 14.

8 --0--

9 (Deposition Exhibit 14 marked.)

10 --0--

11 BY MR. SCHUMACHER:

12 Q. Have you had a chance to review --

13 A. Yes.

14 Q. -- Exhibit 14?

15 Does that refresh your recollection as
16 to the timing of when you may have met with BWF?

17 A. Yes.

18 Q. Okay. Let me hand you a document we're
19 going to mark as Exhibit 15.

20 --0--

21 (Deposition Exhibit 15 marked.)

22 --0--

23 BY MR. SCHUMACHER:

24 Q. Have you had a chance to review

1 Exhibit 15?

2 A. Yes.

3 Q. Does this refresh your recollection as
4 to the people from Building Worthington's Future
5 that you met with sometime in June or late May
6 of 2019?

7 A. Yes.

8 Q. Are those the people listed on
9 Exhibit 15?

10 MR. MILLER: Objection to form.

11 A. I don't know whether all those people
12 showed up. Parker said that these were the
13 people that were coming.

14 Q. Okay. And you also indicated that you
15 would prefer that others, including Bonnie
16 Michael and Doug Foust and David Robinson, not
17 attend.

18 MR. MILLER: Objection to form.

19 Q. Is that a fair reading of Exhibit 15?

20 A. Yes.

21 Q. And as we discussed, you knew in 2019
22 that David Robinson, in particular, didn't favor
23 the plan for a dense residential development on
24 the property, right?

1 MR. MILLER: Objection to form.

2 Q. He was an opponent of the plan that you
3 were proposing?

4 A. Yes.

5 Q. Thank you.

6 And Parker MacDonell and Betsy MacDonell
7 were the leaders at the time of BWF, weren't
8 they?

9 A. I don't know that.

10 Q. You did apparently speak to this group,
11 right?

12 A. Yes.

13 Q. Okay.

14 MR. SCHUMACHER: Sixteen.

15 ==0==

16 (Deposition Exhibit 16 marked.)

17 ==0==

18 BY MR. SCHUMACHER:

19 Q. Have you had a chance to review
20 Exhibit 16?

21 MR. MILLER: It's a multi-page document.
22 I think he's still reviewing.

23 MR. SCHUMACHER: That's why I asked.

24 THE WITNESS: Not yet.

1 MR. MILLER: Do you know why this
2 document doesn't have a Bates number?

3 MR. SCHUMACHER: That one doesn't.

4 MR. MILLER: Do you know why?

5 MR. SCHUMACHER: Pardon me?

6 MR. MILLER: Do you know why?

7 MR. SCHUMACHER: I don't. I have
8 another one with a Bates number.

9 MR. MILLER: I thought it had been
10 produced; so okay.

11 MR. SILK: Probably has something to do
12 with the printer setup so it not fit the page,
13 because I was having that problem printing some
14 of these documents.

15 THE WITNESS: Okay.

16 BY MR. SCHUMACHER:

17 Q. Are these the notes that you used to
18 make the presentation to these 16 or so people
19 on June 3rd, 2019?

20 A. No. These aren't my notes.

21 Q. They're not your notes. Okay.

22 Were they prepared by your organization
23 for you?

24 MR. MILLER: Objection to form.

1 A. I don't know.

2 Q. Were they sent to you by the people at
3 Building Worthington's Future?

4 A. I don't know that either. Usually when
5 I speak I don't use notes.

6 --0--

7 (Deposition Exhibit 17 marked.)

8 --0--

9 THE WITNESS: Okay.

10 BY MR. SCHUMACHER:

11 Q. Have you had a chance to review
12 Exhibit 17?

13 A. Yes.

14 Q. Is this an email -- a true and correct
15 copy of an email you sent on June 4th, 2019 to
16 Parker MacDonell with a copy to Jode Ballard at
17 Lifestyle Communities?

18 A. Yes.

19 MR. MILLER: Objection to form.

20 Q. I'm sorry, what was your answer?

21 A. Yes.

22 Q. Did you write this email?

23 A. To Parker?

24 Q. Yeah.

1 A. Yes.

2 Q. So it is a true and correct copy of an
3 email you wrote to Mr. Parker MacDonell, isn't
4 it?

5 MR. MILLER: I thought he testified as
6 much.

7 A. Yes.

8 Q. Okay. Can I interpret this document to
9 mean that you approved of Mr. MacDonell sending
10 some notes to the mailing list of BWF?

11 MR. MILLER: Objection to form.

12 You may answer.

13 A. Yes.

14 Q. So when you wrote Jode will follow up
15 and okay to distribute notes as long as they are
16 coming from you and not from me or Jode, that's
17 what you meant?

18 A. Yes.

19 Q. But you still approved and looked at the
20 notes before they were sent, didn't you?

21 MR. MILLER: Objection to form.

22 A. I didn't look at the notes.

23 MR. SCHUMACHER: Let's mark these as 18
24 and 19. There are two different documents but

1 they go together.

2 ==0==

3 (Deposition Exhibits 18-19 marked.)

4 ==0==

5 MR. SCHUMACHER: So the first --

6 MR. MILLER: Paul, we've got to get them
7 marked.

8 MR. SCHUMACHER: The June 6, 2019 we'll
9 do as 18.

10 MR. SILK: She's trying to mark and type
11 at the same time.

12 MR. SCHUMACHER: Sorry.

13 THE WITNESS: Okay.

14 MR. SCHUMACHER: Did we mark 18 as the
15 email from Jode Ballard?

16 Thank you.

17 BY MR. SCHUMACHER:

18 Q. Do you recognize Exhibit 18 as an email
19 that Jode Ballard wrote on June 6, 2019 to
20 you -- I'm sorry, to Parker MacDonell with a
21 copy to you?

22 A. Yes.

23 Q. And this attached a document called
24 Michael DeAscentis Presentation Notes 6-3-19.

1 Do you see that?

2 A. Yes.

3 Q. Would Exhibit 19 be the draft of that
4 document that Mr. Jode prepared for you?

5 MR. MILLER: Objection to form.

6 A. Yes.

7 Q. You see where Mr. Ballard says that he
8 went through the notes and sent them and made a
9 few clarifications?

10 A. Yes.

11 Q. Thank you.

12 So my question is did you have an
13 opportunity to review these before they were
14 then distributed by Mr. MacDonell as he
15 indicated he would like to?

16 MR. MILLER: Objection to form.

17 You may answer if you know.

18 A. I don't recall reviewing the notes. I
19 asked Jode to review them.

20 Q. And who is Jode?

21 A. Jode was a development associate at the
22 time.

23 Q. Is Jode still with your company or one
24 of your companies?

1 A. No.

2 Q. When did he leave?

3 A. I'm not sure.

4 Q. Would your company or one of your
5 companies have a last known address for Jode?

6 A. I don't know.

7 MR. SCHUMACHER: Counsel, we'd like to
8 request that you provide us with the last known
9 name and address for Jode Ballard.

10 MR. MILLER: As with all your requests
11 today, noted. We'll see to what it's responsive
12 and comply if so.

13 MR. SCHUMACHER: All right. We can call
14 him at trial, too.

15 BY MR. SCHUMACHER:

16 Q. One thing I'm not clear on is did you
17 make this presentation on June 3rd of 2019, do
18 you know?

19 A. I mean --

20 MR. MILLER: Objection to form. Are you
21 saying that exhibit --

22 MR. SCHUMACHER: I'm just asking --

23 MR. MILLER: Well, this presentation --
24 he said he was at the meeting. And when you say

1 this presentation, are you referring, for
2 instance, to Exhibit 19, or what does that mean?

3 Seeing stone silence from opposing
4 counsel, you may answer the question if you
5 understand.

6 A. I remember being at the meeting. I'm
7 sure as most the times our development people
8 make presentations. It's probably Jode's
9 presentation. I was at the meeting. I remember
10 being at Worthington Square Shopping Center.

11 Q. Do you recall discussing the idea that
12 you needed to get community support, but that
13 wasn't working?

14 A. No.

15 Q. You don't remember that being discussed
16 at all with the 16 people who may have been at
17 this meeting?

18 A. I don't recall.

19 Q. You don't recall discussing this topic
20 with anyone there?

21 MR. MILLER: Objection. Asked and
22 answered.

23 A. Yeah, I don't recall specifically that
24 topic coming up.

1 Q. So if someone who attended the meeting
2 said that you indicated that LC was not going to
3 file until it got community support and that
4 that hasn't worked so you were going to try a
5 different approach, you don't recall that being
6 said?

7 A. No.

8 MR. MILLER: Objection to form.

9 A. No.

10 Q. Okay. Fine.

11 MR. SCHUMACHER: Twenty.

12 --0--

13 (Deposition Exhibit 20 marked.)

14 --0--

15 BY MR. SCHUMACHER:

16 Q. Have you had a chance to review
17 Exhibit 20?

18 A. Yes.

19 Q. Do you see the little Bates number in
20 the bottom right-hand corner LC00018681?

21 A. Yes.

22 Q. Thank you.

23 Is this a true and correct copy of an
24 email that David Fisher sent to you on

1 June 28th, 2019?

2 A. Yes.

3 MR. MILLER: Objection to form. Sorry.

4 You may answer.

5 Q. I'm sorry, is it?

6 A. Yes.

7 Q. Do you have any reason to doubt its
8 authenticity?

9 MR. MILLER: Objection to form.

10 A. No.

11 Q. And it was produced by your client
12 according to the Bates number in the right-hand
13 corner.

14 MR. MILLER: Is that a question?

15 MR. SCHUMACHER: Yes.

16 A. My client?

17 Q. Yeah.

18 MR. MILLER: Same objection.

19 Q. It was produced by the Plaintiffs in the
20 lawsuit. Do you know one way or the other?

21 A. I don't know.

22 Q. That's fine. As we discussed before,
23 you knew there was community opposition to your
24 plan, didn't you?

1 MR. MILLER: Objection to form.

2 A. Yes.

3 Q. Okay.

4 MR. SCHUMACHER: Exhibit 21.

5 --0--

6 (Deposition Exhibit 21 marked.)

7 --0--

8 THE WITNESS: Okay.

9 BY MR. SCHUMACHER:

10 Q. Have you had a chance to review Exhibit
11 21?

12 A. Yes.

13 Q. Does this appear to be a true and
14 correct copy of an email that you sent on
15 July 5th, 2019 to Sam Koon regarding the
16 Worthington council June updates and town hall?

17 A. Yes.

18 Q. Thank you.

19 MR. SCHUMACHER: Twenty-two.

20 --0--

21 (Deposition Exhibit 22 marked.)

22 --0--

23 THE WITNESS: Okay.

24

1 BY MR. SCHUMACHER:

2 Q. Have you had a chance to review Exhibit
3 22?

4 A. Yes.

5 Q. Is this a true and correct copy of an
6 email that David Fisher sent to you on
7 July 15th, 2019 regarding the UMCH meeting?

8 A. Yes.

9 Q. Thank you.

10 Mr. DeAscentis, did your company retain
11 any public relations companies to assist in the
12 community outreach in the city of Worthington
13 for the project that brings us here for this
14 lawsuit?

15 MR. MILLER: Objection to form.

16 You may answer.

17 A. I don't know.

18 Q. Did you know that Jode Ballard from your
19 company retained a consultant to assist in
20 securing the necessary rezoning of the city of
21 Worthington?

22 A. I'm sorry, could you repeat the
23 question?

24 MR. SCHUMACHER: Julia.

1 (Record read as requested.)

2 MR. MILLER: Objection.

3 You may answer.

4 A. Jode probably would have hired LRK, the
5 architect, I would guess.

6 Q. How about Griffin Communications?

7 MR. MILLER: Same objection.

8 Q. Do you know them?

9 A. No.

10 Q. So it wouldn't surprise you then, it
11 sounds like, that Jode would have hired a
12 communications company to assist in gaining
13 support for your rezoning effort in the city of
14 Worthington, would it?

15 A. No.

16 MR. MILLER: Same objection.

17 Q. I mean, you wanted to build community
18 support for the proposed rezoning, didn't you?

19 A. Yes.

20 Q. And you wanted to position the issue to
21 support passage of the rezoning if you could,
22 right?

23 A. Typically we don't need community
24 support to get zoning when we have either zoning

1 or we have a comprehensive plan in place, but
2 since we're long-term holders we like the
3 residents -- we try -- we use best efforts to
4 get them on board, and that was at the direction
5 of Matt Greeson.

6 Q. But you knew that in the city of
7 Worthington you needed to obtain approval of the
8 planning commission as well as city council,
9 didn't you?

10 MR. MILLER: Objection to form.

11 A. Yes.

12 Q. Your lawyers advised you of that, didn't
13 they?

14 MR. MILLER: Hey, take that question
15 back, please.

16 MR. SCHUMACHER: I think it's a fair
17 question.

18 MR. MILLER: No.

19 MR. SCHUMACHER: We're talking about a
20 developer.

21 MR. MILLER: Come on. I know you didn't
22 mean to ask it like that.

23 MR. SCHUMACHER: I withdraw the
24 question. Fine.

1 BY MR. SCHUMACHER:

2 Q. But you knew you had to get approval in
3 this community. It was no secret to you, was
4 it?

5 MR. MILLER: Objection to form.
6 Mischaracterizes the testimony, and I don't know
7 what approval of the community versus a rezoning
8 by a city council, what that means exactly.

9 MR. SCHUMACHER: Thank you again,
10 Mr. Miller.

11 Q. In the city of Worthington you were
12 aware for many years before you made a formal
13 application that that application would have to
14 be approved by the city of Worthington city
15 council?

16 A. Yes.

17 Q. Simple question.

18 A. Yes.

19 Q. Right?

20 Okay. And you had to do everything you
21 could to convince the citizens, their
22 representatives in the city government, and
23 ultimately city council in order to have that
24 rezoning application approved.

1 MR. MILLER: Objection --

2 Q. You knew that.

3 MR. MILLER: Sorry. Objection to form.

4 A. I knew I had to get city council's
5 approval.

6 Q. And in so doing that they, the city
7 council, was telling you that you needed to get
8 public support. Do you deny that?

9 MR. MILLER: Objection to form.

10 A. No.

11 Q. And what you did is you hired a
12 communications company to position yourself to
13 support the passage of that rezoning in order to
14 deter a later referendum attempt, didn't you?

15 MR. MILLER: Objection to form.

16 Mischaracterizes the facts --

17 A. I didn't.

18 MR. MILLER: -- and testimony as to --

19 Q. Your company --

20 MR. MILLER: -- extensive meetings and
21 outreach.

22 Q. Your company did that, didn't they?

23 A. I don't know.

24 --0--

1 (Deposition Exhibit 23 marked.)

2 ==0==

3 MR. SCHUMACHER: Twenty-three?

4 COURT REPORTER: Yes.

5 (Discussion off the record.)

6 THE WITNESS: Okay.

7 BY MR. SCHUMACHER:

8 Q. Have you had a chance to review
9 Exhibit 23?

10 A. Yes.

11 Q. Was Jode Ballard an employee of
12 Lifestyle Communities on October 7th, 2019?

13 A. Yes.

14 Q. Would you admit that the document marked
15 as Exhibit 23 was received by Lifestyle
16 Communities or one of its affiliate companies?

17 MR. MILLER: Objection to form.

18 A. Yes.

19 Q. Does this refresh your recollection
20 about retaining a communications company and a
21 survey company to complete work outlined in this
22 document?

23 MR. MILLER: Objection to form.

24 Q. Or do you still not remember it?

1 A. I wasn't involved in hiring a --

2 Q. That wasn't my question.

3 A. -- communications company.

4 Q. My question's a little different.

5 A. Okay. Could you repeat the question?

6 Q. Does this refresh your recollection that
7 in your effort to obtain rezoning of the
8 property at issue in this lawsuit that you
9 retained a communications company and a survey
10 company to assist you?

11 MR. MILLER: Objection to form. Assumes
12 certain facts. Use of the word you.

13 A. I just want to make sure I understand
14 your question. I don't know that we ever hired
15 this company.

16 Q. Is that your answer?

17 A. Yes.

18 Q. You don't know if you ever hired?

19 A. I don't know.

20 Q. So if a report exists from the
21 Saperstein Associates Company, you've never
22 heard about it or seen it. Is that your
23 testimony?

24 A. Who's the Saperstein?

1 Q. The outfit that's outlined in this
2 document.

3 A. No, not that I'm aware of.

4 Q. That's fine.

5 A. I mean, our development people hire lots
6 of people. I typically don't get involved --

7 Q. That's fine.

8 A. -- in managing consultants.

9 Q. I'm sorry.

10 MR. MILLER: He's answering your
11 question, Paul. Let him speak.

12 MR. SCHUMACHER: That's fine.

13 BY MR. SCHUMACHER:

14 Q. So my question again, Mr. DeAscentis, is
15 a little different. What I want to know is when
16 you filed this lawsuit against the city of
17 Worthington, were you aware at any time that
18 you'd hired a consultant or a communications
19 company to assist you in getting the rezoning
20 passed and to deter a referendum?

21 MR. MILLER: Objection to form and use
22 of the word you.

23 A. No.

24 Q. Okay. So you wouldn't know what the

1 results of such survey were when your company
2 received it. Is that right?

3 MR. MILLER: Same objections.

4 A. I don't recall.

5 Q. I'm sorry?

6 A. I just don't recall. I mean, again,
7 we've developed hundreds of properties and I see
8 all kinds of reports. I don't specifically
9 remember receiving anything from Griffin or a
10 survey document.

11 Q. And you don't obviously know then what
12 the results of any survey that your company
13 initiated in this case, do you?

14 A. I don't.

15 Q. Now, we know that the application to
16 rezone the property that forms the basis of this
17 lawsuit was filed by your attorney Tom Hart on
18 October 2nd of 2020. Are you aware of that?

19 MR. MILLER: Objection to form.

20 A. I know we filed an application. I don't
21 know if Tom filed it or Bo filed it or who filed
22 it, but I know we filed an application.

23 Q. would you stipulate that it was filed on
24 October 2nd, 2020?

1 MR. MILLER: I don't have the document
2 in front of me, but we can probably work
3 something like that out, yeah. I mean, he's
4 given you his best truthful answer.

5 Q. Did you, Michael DeAscentis, have some
6 timeline in your mind that you wanted to file
7 this application officially?

8 MR. MILLER: Objection to form.

9 A. No.

10 Q. So let's start. You knew in 2015 that
11 there was public pushback on the proposal, and
12 this application itself was filed on October 2nd
13 of 2020. If you assume those facts, right, what
14 did you do between those two times in order to
15 try and get your application approved?

16 MR. MILLER: Objection to form. Asked
17 and answered.

18 You may answer it again.

19 A. Matt Greeson encouraged me to go meet
20 with the people in the community, meet with the
21 school board, and so I mean, our people had
22 several meetings. I went into some of them, and
23 obviously we did the work to prepare our plans.
24 I think we went out and looked to try to get

1 some tenants for the commercial property. I was
2 specifically involved in trying to secure some
3 tenants.

4 Q. Anything else you can think of?

5 MR. MILLER: Objection to form. Asked
6 and answered.

7 You may answer.

8 A. Anything else I did? No.

9 Q. Well, here's what I don't understand.
10 This is your lawsuit, right, you're the person
11 who has the financial interest in the lawsuit.
12 And I want to know what is it that you or your
13 companies did between 2015 and 2020 to engage
14 the community that you already knew was pushing
15 back against a dense residential development?

16 MR. MILLER: Objection to form and
17 compound question. He's testified to the
18 extensive community outreach that he did,
19 mentioned that that others did. I'm not sure
20 what more you want by continuing to ask this
21 question, Paul.

22 Q. I want to know what you're going to tell
23 the jury in this case that you and your company
24 did. I want you to articulate what it is you

1 did to try and get your zoning approved as you
2 said you were going to do.

3 MR. MILLER: Objection to form. Asked
4 and answered.

5 A. We typical -- we did on this project
6 probably more than we do on other projects in
7 terms of trying to engage the community to get
8 their support. So we go to meetings, we hear
9 what their concerns are, we ask them about their
10 product they want, ask them about the type of
11 product, ask them about greenspace. We went to
12 various constituent groups. We talked to
13 various people at city council.

14 I specifically worked a lot with Matt
15 Greeson, and he gave me the direction to go
16 engage Yaromir Steiner, he gave me the direction
17 of who to meet with. And so again, we did more
18 on this project to get community support than we
19 typically do. I'm a Columbus guy, and I felt
20 like we should -- we should do -- use, you know,
21 best efforts to see if they like the project.

22 Q. But as we've discussed you continued to
23 get negative feedback from the community itself,
24 didn't you?

1 MR. MILLER: Objection to form.

2 A. Yes.

3 Q. In fact, you and your company knew that
4 certain members, citizens of Worthington
5 actually ran for council with this particular
6 property as their main issue. You knew that,
7 didn't you?

8 MR. MILLER: Objection to form.

9 A. I didn't.

10 Q. You didn't?

11 A. (Shakes head).

12 Q. You didn't know that they were -- that
13 your company was looking at anti-development
14 councilpersons and pro-development
15 councilpersons?

16 MR. MILLER: Objection. Asked and
17 answered.

18 A. I don't recall.

19 Q. Do you typically engage with the local
20 politicians in efforts to obtain your rezoning
21 requests?

22 MR. MILLER: Objection to form.

23 You may answer.

24 A. Either the mayor and usually the city

1 manager is -- you know, me specifically.

2 MR. SCHUMACHER: This is 24.

3 --0--

4 (Deposition Exhibit 24 marked.)

5 --0--

6 MR. MILLER: I don't know. We've been
7 going about an hour, Paul.

8 MR. SCHUMACHER: I believe it's 24.

9 COURT REPORTER: Yes.

10 MR. MILLER: Did you hear me?

11 MR. SCHUMACHER: Yeah. I have it on a
12 timer if we get --

13 MR. MILLER: Yeah, yeah. I'm not saying
14 it's urgent.

15 MR. SCHUMACHER: Unless you have -- if
16 you have to --

17 MR. MILLER: No.

18 MR. SCHUMACHER: -- take a break, we'll
19 take a break.

20 MR. MILLER: Nope. Just letting you
21 know.

22 THE WITNESS: I'm ready.

23 BY MR. SCHUMACHER:

24 Q. Have you had a chance to review

1 Exhibit 24?

2 A. Yes.

3 Q. Was Jode Ballard the point person on the
4 development of this property aside from the
5 rezoning itself?

6 MR. MILLER: Objection to form.

7 A. I don't know if he was point person.

8 Q. Who was?

9 A. Well, we had Chase Miller, we had Brent
10 Miller, and we had Bo Brownlee. We typically
11 assemble a team and kind of take the team
12 approach to projects.

13 Q. What was Jode's role, then?

14 MR. MILLER: Objection to form. Asked
15 and answered.

16 You may answer again.

17 A. I don't know.

18 Q. Who is Eric Buchanan?

19 A. Eric was our chief development officer
20 out of Denver. So typically the development
21 people would report to Eric. Jode probably
22 reported to Eric.

23 Q. The document itself lists two different
24 timelines for filing an application to rezone

1 the UMCH property. Isn't that what it is
2 addressing?

3 MR. MILLER: Objection to form.

4 Mr. DeAscentis is not on this document.

5 MR. SCHUMACHER: I understand that.

6 MR. MILLER: He hasn't testified whether
7 he's ever even seen it.

8 A. I'm sorry, what was the question again?

9 Q. You had two different timelines --

10 MR. MILLER: You?

11 MR. SCHUMACHER: Joe, please.

12 Q. Mr. DeAscentis, did you yourself
13 personally have any timeline in your mind as to
14 when you wanted to make the formal application
15 to rezone the property?

16 A. No.

17 Q. This document would suggest that Jode
18 Ballard, your director of development who was on
19 this team, had two different timelines depending
20 upon who got elected. Is that a fair reading of
21 this document?

22 MR. MILLER: Same objections.

23 A. Yes.

24 Q. So if I put this up in front of a jury,

1 you think they could have the same basic
2 understanding of what you've just said?

3 MR. MILLER: Same objections.

4 A. Yes.

5 Q. Thank you.

6 who's Steve Falk, F-A-L-K?

7 A. Steve is a personal lawyer for me.

8 Q. He's employed by Lifestyle Communities
9 Ltd.?

10 A. No.

11 Q. He's employed by who?

12 A. LCCP, I believe. Lifestyle capital --
13 Lifestyle Communities Capital Partners.

14 Q. who owns Lifestyle Communities Capital
15 Partners?

16 A. Me, my father, some of our kids' trusts.
17 I think that's it.

18 MR. SCHUMACHER: Let's mark this
19 Exhibit 25.

20 --0--

21 (Deposition Exhibit 25 marked.)

22 --0--

23 THE WITNESS: Okay.

24

1 BY MR. SCHUMACHER:

2 Q. Is this a true and accurate copy of an
3 email Steve Falk sent to you on December 23rd,
4 2020?

5 MR. MILLER: Objection to form.

6 You may answer.

7 A. Yes.

8 Q. Now, by this point if we assume that
9 your application was made to the city of
10 Worthington to rezone the property on
11 October 2nd, 2020, this document would be after
12 that. Is that fair?

13 A. Yes.

14 Q. Who is Allotta, A-L-L-O-T-T-A?

15 A. He's a lawyer with Baker & Hostetler out
16 of Cleveland that does a lot of personal -- when
17 I say personal, I refer like non-LC, like real
18 estate work that's not specifically LC work, LC
19 projects.

20 Q. Yeah, that's where I'm confused again.
21 Is the city of Worthington project that we've
22 been here about, is that an LC project or is
23 that a Michael DeAscentis project?

24 MR. MILLER: Objection to form.

1 A. It's kind of both. The apartment,
2 multi-family residential component will be an LC
3 project, but the office, the retail, the
4 commercial, the single-family residential,
5 that'll be something that I do outside of LC to
6 make sure LC's team is just focused on what they
7 do.

8 Q. Building those apartments?

9 A. Correct.

10 Q. And you would profit on both sides of
11 that, right?

12 A. Yes.

13 MR. MILLER: Objection to form.

14 You may answer.

15 A. Yes.

16 Q. Okay. Who is Intihar, I-N-T-I-H-A-R?

17 A. Steve Intihar is a lawyer with Bricker &
18 Eckler that handles the LC real estate stuff.

19 Q. And who is Bo in this email referring
20 to?

21 A. Bo Brownlee.

22 Q. So if I interpret this right, the deal
23 that you wanted to pursue to develop property in
24 the city of Worthington was being handled by

1 lawyer Allotta, lawyer Intihar, lawyer Bo
2 Brownlee, and lawyer Tom Hart. Do I have that
3 right?

4 MR. MILLER: Objection to form.

5 A. Well, not really.

6 Q. Did I miss someone?

7 A. Well, I mean, this is why I said this is
8 a cluster in my email here. It was the roles
9 and responsibilities of -- was a cluster, who we
10 have that's responsible for the LC work and
11 who's responsible for the non-LC work. That was
12 what I was talking to -- Steve handles the
13 non-LC stuff. And so the cluster I was
14 referring to is, you know, I have a president
15 that runs the company, and he -- he really
16 frowns upon some of the LC people doing real
17 estate work, legal work and you know -- for
18 stuff that's outside LC's scope.

19 And since this was a mixed use project,
20 typically I would have on -- for the acquisition
21 and financing I would probably have not Steve
22 Intihar do it because he does LC's work. I
23 would have Steve Falk use it with John Allotta.

24 So this is an email that I was sending

1 him saying, hey, the roles and responsibilities
2 of getting this property acquired and closed has
3 been a cluster, like you're not managing the
4 people right.

5 Q. The people being these lawyers?

6 A. Well --

7 MR. MILLER: Objection to form.

8 A. -- they're not all lawyers.

9 Q. Including Mr. Falk, right?

10 A. Steve was doing -- well, Steve wasn't
11 managing it the way that I wanted him to manage
12 the different people in the company.

13 Q. Is it fair to say that you were not
14 happy with the Worthington acquisition because
15 of the interaction of the roles of these
16 lawyers?

17 MR. MILLER: Objection to form.

18 A. No. It was the -- it was the
19 responsibility that Bo has to represent the
20 company, and then that Steve Falk has to
21 represent me personally, and that was the
22 cluster that I was upset with.

23 Q. I see. And that's because, again, you
24 were -- you were on both sides of the deal in

1 the sense of the residential development part
2 with LC and the retail side --

3 A. Commercial side.

4 Q. -- personally. Commercial. Thank you.

5 MR. SCHUMACHER: Want to take a break?

6 THE VIDEOGRAPHER: Off the record.

7 (Recess taken.)

8 THE VIDEOGRAPHER: Okay. Back on the
9 record.

10 BY MR. SCHUMACHER:

11 Q. Mr. DeAscentis, I wanted to go back to
12 something we talked about earlier to make sure I
13 understand the way this deal was set up. I
14 think you said that this Worthington Campus Ltd.
15 entity --

16 MR. SCHUMACHER: LLC?

17 MR. SILK: Yes.

18 Q. -- LLC was set up to deal with or
19 develop the residential component of the
20 proposal. Is that right?

21 MR. MILLER: Objection to form.
22 Mischaracterizes prior testimony.

23 Go ahead.

24 MR. SCHUMACHER: That's why I asked.

1 A. I don't -- I don't think so. I think
2 that entity was set up to do the acquisition.

3 Q. Of the real estate?

4 A. Of the -- of the total piece of
5 property.

6 Q. Okay. Did they, they being Worthington
7 Campus, did they receive any revenue in the
8 project from commercial retail or other, or do
9 they only receive it from the residential
10 portion?

11 MR. MILLER: Objection to form.
12 Mischaracterizes his prior testimony.

13 MR. SCHUMACHER: That's why I'm trying
14 to understand it.

15 MR. MILLER: I think you got it
16 backward.

17 A. Yeah. Typically when we have mixed use
18 projects we'll take the property and then we'll
19 sell the residential piece to LC and then the
20 nonresidential piece I'll keep in a separate
21 non-LC entity. You saw that reference to non-LC
22 entity. And I don't know if that was
23 Worthington Campus or if that was a different
24 entity. I'm not sure.

1 Q. Okay. Mr. Miller's objection made me
2 realize I think you just said Worthington Campus
3 was the entity that you used to acquire the
4 property to own it. Is that right?

5 A. I'm not positive who --

6 Q. Okay. All right.

7 A. I know an entity that I own owns the
8 property. I'm not sure what the name of the
9 entity is.

10 Q. Okay. And do both of the entities in
11 this -- that are Plaintiffs in this lawsuit,
12 which is Worthington Campus and Lifestyle
13 Communities Limited, receive income under the
14 proposal if you had been able to get the zoning?

15 A. Yes.

16 MR. SCHUMACHER: Let's mark Exhibit 26.

17 --0--

18 (Deposition Exhibit 26 marked.)

19 --0--

20 BY MR. SCHUMACHER:

21 Q. Have you had a chance to review
22 Exhibit 26?

23 A. Yes.

24 Q. Is this a true and accurate copy of an

1 email that Chad Thompson sent to you on
2 April 9th, 2021?

3 MR. MILLER: Objection to form.

4 A. Yes.

5 Q. Does it look to be an accurate copy of
6 the email that was exchanged between you and
7 Mr. Thompson?

8 A. Yes.

9 Q. You see at the bottom there where you
10 wrote on Friday, April 9th, 2021 that paragraph
11 at the very bottom?

12 A. Yes.

13 Q. Were you referring to the UMCH project
14 there?

15 A. I don't know.

16 Q. Did you answer? I'm sorry, I couldn't
17 hear you.

18 MR. MILLER: He did.

19 A. I don't know.

20 Q. Oh, okay. Because the subject line at
21 the top says Worthington, but the conversation
22 you have with him in the middle of the first
23 page of the document appear to be discussing a
24 meeting that you and/or Bo was going to attend.

1 A. Yeah. And I don't know what Oz is.

2 Q. Okay.

3 A. That's why I wasn't sure.

4 Q. The sentence at the very bottom where
5 you write since it's likely we will not be doing
6 any apartments and this is all for sale, I'm
7 moving this project to home building division
8 and asking Sam to run point, do you see that?

9 A. Yes.

10 Q. Is Sam the same Sam that we referred to
11 earlier? Koon?

12 A. No.

13 Q. Which Sam is this?

14 A. Sam Stark.

15 Q. Okay. I'm assuming then that Sam Stark
16 runs your home building division?

17 A. He doesn't. He does planning. He used
18 to be a salesperson with me. Now he's in
19 planning, and this is where we were probably
20 planning to build. Instead of selling off the
21 residential lots, we were actually going to
22 build on them.

23 Q. Where?

24 MR. MILLER: You had said earlier --

1 Q. In Worthington?

2 MR. MILLER: -- you don't know whether
3 this was a Worthington project. I don't want
4 you to guess.

5 A. We started a home building -- we use --
6 20 years ago I was building for-sale product. I
7 started up in apartments, then I got into the
8 for sale, and then I started -- kept building
9 apartments, and then I started back in the
10 for-sale business about a year ago. So this --
11 we have a home building division now that
12 actually Sam doesn't run. So I'm not sure why I
13 said Sam to run point.

14 Q. Well, if in April of 2021 you decided
15 not to build apartments at the property, the
16 UMCH property in Worthington, you were
17 considering building homes there?

18 MR. MILLER: Objection. Speculative.
19 Mischaracterizes prior testimony. He said he
20 didn't know if this correspondence relates to
21 the Worthington project.

22 MR. SCHUMACHER: Thank you, Mr. miller.

23 MR. MILLER: Well, you're assuming it
24 does --

1 MR. SCHUMACHER: A form objection is
2 fine.

3 MR. MILLER: -- his prior testimony --

4 MR. SCHUMACHER: I'm trying to let --

5 MR. MILLER: -- under oath.

6 MR. SCHUMACHER: If you let the witness
7 answer the question, maybe we can get somewhere.

8 Can you read back the question, Julia.

9 (Record read as requested.)

10 A. Again, I was going to -- this would
11 indicate that I was going to -- instead of
12 selling off the lots because we had apartments
13 and residential lots, the townhomes.

14 Q. Right.

15 A. We were originally going to sell those
16 off. This was I'm just going to build them.

17 Q. Okay.

18 A. Instead of selling them off to MI or
19 Ryan or a lot of the public -- we develop lots
20 and sell them off to builders. This statement
21 indicates that I was saying, hey, we're just
22 going to build them. Build on that section. We
23 would build those houses. This is related to
24 the non-LC stuff.

1 Q. Instead of building apartments?

2 A. Well, no. Sam -- I mean, Sam works for
3 LC. So LC may still build apartments, but for
4 the non-LC stuff I was going to build the units,
5 which typically we used to do. We just started
6 to do again.

7 Q. Well, let me ask you this. You, Michael
8 DeAscentis, currently own the property that's on
9 High Street that we call the UMCH property,
10 right?

11 MR. MILLER: Objection to form.

12 A. Yes.

13 Q. You sure?

14 A. Am I sure I own it?

15 Q. Yeah.

16 A. Yeah.

17 Q. Okay. All right.

18 A. I'm not sure what entity I own it in,
19 but I'm sure I own it.

20 Q. Just want to make sure. And if you
21 chose to you could -- you have the capability of
22 building single-family homes on that property.
23 Of course, you'd need to get that zoning
24 approved, right?

1 MR. MILLER: Objection to form.

2 A. Correct.

3 Q. In fact, I think some portion of the
4 property is currently zoned for such residential
5 properties, isn't it?

6 A. I think it's two houses that I bought
7 that you could build -- they have single-family
8 houses on them.

9 Q. All right. But one option for you,
10 Michael DeAscentis, is to apply to rezone the
11 entire property for a different type of
12 single-family home than you've been proposing so
13 far, right?

14 MR. MILLER: Objection to form.

15 A. I don't --

16 MR. MILLER: I was going to say you may
17 answer if you understand the question.

18 Q. Let me ask this. You know how to build
19 homes and townhomes and apartments, don't you?

20 A. Yes.

21 Q. And if you chose to, you could develop
22 this particular 30-some acre property in
23 townhomes, couldn't you?

24 MR. MILLER: Objection to form.

1 A. The whole project?

2 Q. Yeah.

3 A. That's not what the comprehensive plan
4 calls for.

5 Q. I'm not asking you about the
6 comprehensive plan. I'm saying --

7 A. You're asking me if I have the
8 capabilities?

9 Q. Yes, do you have that capability?

10 A. We have the capabilities to build
11 townhomes, apartments, single-family houses.

12 Q. So if you chose -- if you, Michael
13 DeAscentis, chose to, you could change the mix
14 of properties or residences that you propose to
15 build on this site to a lower style -- lower
16 density style property --

17 MR. MILLER: Objection.

18 Q. -- and still make money?

19 MR. MILLER: Well, that's what I was
20 going to ask. Regardless of economic necessity?

21 A. I don't know.

22 Q. Well, let me ask -- that's a --
23 interesting you brought that up. How do you
24 decide what kind of money you, Michael

1 DeAscentis, will make when you develop
2 apartments or any property?

3 MR. MILLER: Objection to form.

4 You may answer the question if you
5 understand it.

6 How does he decide how much money he's
7 going to make?

8 A. We typically look at the rents in the
9 submarket, and then we look at the demand, and
10 we look at the product type, and then we put
11 together a product type that matches the demand
12 and matches the rent that they're already
13 getting in the community.

14 Q. Is it fair to say that you're an expert
15 in this area?

16 A. No.

17 Q. You've done -- you're a \$500 million
18 company, aren't you?

19 A. Yes.

20 Q. And you've developed dozens and dozens
21 of residential developments around the country,
22 haven't you?

23 A. Yes.

24 Q. You know what a yield is, don't you?

1 A. Yes.

2 Q. Can you explain to me what a yield is in
3 your mind?

4 A. Typically a yield is our -- we take the
5 cost of the project and we divide it by the NOI
6 and that's your development yield.

7 Q. You divide it by the?

8 A. Net operating income.

9 Q. Thank you.

10 A. Yeah.

11 Q. And you come up with what?

12 A. A percentage.

13 Q. Okay. These are based upon projections
14 you make of those factors, aren't they?

15 A. Yes.

16 Q. You have experience doing that?

17 A. I mean, my team has a lot of experience
18 doing it.

19 Q. And they report back to you as the CEO,
20 don't they?

21 A. Yes.

22 Q. And you're not going to take on a
23 project that doesn't have a yield rate that you
24 feel is something you want to get involved in,

1 isn't it?

2 A. It's typically -- it's typically tied to
3 the risk that we're taking and that develop --
4 some projects are complicated to build, some
5 projects are easy to build. Doing a highrise or
6 you're building a two-story apartment building,
7 they're different. So the yield is different.

8 Q. All right. So in simple terms in this
9 project you are going to look at the number of
10 residential units, including rental apartments,
11 and try and project what kind of income you
12 would make on that development is one factor,
13 right?

14 A. Yes.

15 Q. And then you would take the cost of
16 actually building that development by hiring
17 contractors, by acquiring land, by obtaining
18 zoning approvals, all those costs and you make a
19 simple division, right?

20 A. You first --

21 MR. MILLER: Objection to form.

22 You may answer.

23 A. You first have to do the commercial
24 income, too.

1 Q. Okay. Well, I want to focus on the
2 residential portion of it. It would be the same
3 for either --

4 A. No.

5 Q. -- but it's the same calculation?

6 A. No. Different -- different rates.
7 Interest rates are different.

8 Q. Sure, of course.

9 A. Cap rates are different.

10 Q. Sure.

11 A. Land cost is different.

12 Q. Right.

13 A. Construction cost is different.

14 Q. But those costs are still going to be
15 divided by the income to get to the yield?

16 A. Correct.

17 Q. Okay. It's a pretty simple calculation,
18 isn't it, but there's a lot that goes into it?

19 MR. MILLER: Objection to form.

20 You may answer.

21 A. I don't -- well, is it a simple
22 calculation? Yes, it's division.

23 Q. Mr. DeAscentis, you're not going to get
24 involved in a project where you're not going to

1 get a substantial enough yield rate to make it
2 successful for your company and your employees,
3 are you?

4 MR. MILLER: Objection to form.

5 You may answer.

6 A. No.

7 Q. And in the residential yield the more
8 apartments you have the more rents you're going
9 to receive, correct?

10 A. Correct.

11 Q. And the higher your yield's going to be?

12 MR. MILLER: Objection to form.

13 Q. Assuming all your costs are the same.

14 A. The costs aren't the same.

15 Q. Of course not.

16 A. The more units the more cost.

17 Q. Right. But --

18 A. Bigger doesn't always mean better. I
19 can show you projects that I've done that have a
20 low amount of units that have a higher yield
21 than projects that I built that have a high
22 amount of units and a lower yield.

23 Q. Please name those.

24 A. Line Street, Charleston.

1 Q. Hold on. Lime Street?

2 A. Line Street, LLC. Line Street.

3 Q. How do you spell that?

4 A. L-I-N-E.

5 Q. Street?

6 A. Yep.

7 Q. Where's that?

8 A. Charleston, South Carolina.

9 Q. Any others?

10 MR. MILLER: Any other what?

11 Q. Projects that have a yield that isn't
12 the same.

13 A. Well, they're all different.

14 MR. MILLER: Objection to form.

15 Q. I'm sorry?

16 A. Every project has a different yield.

17 Q. Right. So in the Line Street project,
18 for instance, how do you know that the yield is
19 high or low? What do you look at?

20 MR. MILLER: Objection to form.

21 A. We look at the cost and the net
22 operating income, and we compare that to the
23 cost and the rents, interest rates, cap rates.
24 So it's different. Every single project has a

1 different yield.

2 Q. What does Michael DeAscentis look at in
3 order to evaluate the yield on any project?

4 A. All those things.

5 Q. Is it a spreadsheet?

6 A. No.

7 Q. Is it --

8 A. Economic factors.

9 Q. Is it a document?

10 A. No.

11 MR. MILLER: I don't know that he's done
12 answering, Paul. And I do apologize. There's
13 going to be a retirement party next door.

14 Q. I'm sorry?

15 A. No, it's not a document or spreadsheet.

16 Q. So do you do this calculation yourself
17 on the back of a napkin? How do you determine
18 the yield on a project that you're planning on
19 investing in?

20 MR. MILLER: Objection to form.

21 You may answer.

22 A. Our team assembles a bunch of data and
23 it's all different.

24 Q. And what data did they assemble in this

1 case to inform you as to the yield rate you
2 could get on the Lifestyle project in
3 Worthington?

4 A. Oh, I don't -- I don't know the exact
5 calculations sitting here. I can -- I don't
6 know. I don't have it at my -- it's a
7 complicated -- it's not just two pieces of data.
8 It's a lot of data.

9 Q. And I'm sure --

10 A. They put together a pro forma for us.

11 Q. Okay. So you do look at a pro forma?

12 A. Yeah, I look at the financial analysis.

13 Q. Okay. All right. Was there a pro forma
14 or an evaluation of the yield that was done in
15 2015 in June when you made the -- before you
16 made the presentation to the citizens at that
17 meeting?

18 MR. MILLER: Objection to form.

19 You may answer --

20 A. I don't know.

21 MR. MILLER: -- if you know.

22 A. I don't know.

23 Q. You do know and we discussed that there
24 were -- there was a proposal to develop the

1 property, including approximately 571
2 residential units, a certain amount of
3 greenspace, a certain amount of commercial
4 space. You remember that, right?

5 A. Yes.

6 Q. You certainly wouldn't make that
7 proposal without doing some kind of yield
8 analysis, would you?

9 MR. MILLER: Objection to form.

10 A. Yes.

11 Q. You would do that?

12 A. Sure.

13 Q. Without doing it?

14 A. Sure.

15 Q. Because you have experience?

16 A. Sure.

17 Q. Okay. Did you then make any such yield
18 analysis or pro forma before the application was
19 submitted in October of 2020 to actually develop
20 this property?

21 MR. MILLER: Objection to form.

22 You may answer.

23 A. I'm sure my team -- I'm sure my team
24 did.

1 Q. Could you send an email to them right
2 now and say provide that to me?

3 A. I probably have to send it to Bo and
4 he's no longer an employee, but I could track
5 him down.

6 MR. MILLER: And if certainly it hasn't
7 been produced or that's a request you're making,
8 we can deal with it through discovery channels
9 versus his email at a deposition.

10 Q. I'm trying to understand what it is that
11 you understand to be those things.

12 MR. MILLER: I don't understand.

13 Q. So I would like to see those.

14 MR. MILLER: Okay.

15 A. Sure.

16 MR. SCHUMACHER: I'm making a formal
17 request for those.

18 MR. MILLER: Have you ever served a
19 discovery request for those?

20 MR. SCHUMACHER: I'm certain -- yes, we
21 have.

22 MR. MILLER: Okay. Well, we'll deal
23 with it outside the deposition.

24 MR. SCHUMACHER: Okay. All right.

1 BY MR. SCHUMACHER:

2 Q. But as we sit here today can you tell me
3 at all what you believe the yield rate to be
4 when you made this application to actually
5 rezone the property in October of 2020?

6 MR. MILLER: Objection to form.

7 A. I don't recall the yield rate.

8 Q. Give me an approximation.

9 MR. MILLER: No, I don't want him to
10 guess.

11 Q. Was it a good deal or a bad deal?

12 MR. MILLER: Objection to form.

13 A. I don't recall the yield rate.

14 Q. Okay. You didn't care what the yield
15 rate was, you just wanted to develop the
16 property?

17 MR. MILLER: Objection to form. He
18 didn't say that.

19 Q. It's a question.

20 A. I always care.

21 Q. All right. But you can't tell me
22 whether the yield rate was, in your opinion as a
23 very experienced developer, a good one or a bad
24 one on this deal?

1 A. I don't recall the yield rate.

2 Q. Okay. Is it fair to say that the yield
3 rate would have gone up if you increased the
4 residential density from 531 to 730?

5 MR. MILLER: Objection to form.

6 Q. More apartments than you'd projected
7 before.

8 A. Not necessarily.

9 Q. Okay. And you say -- can you prove that
10 to me by showing me the yield analysis?

11 MR. MILLER: Objection to form. He
12 doesn't have to prove anything in this
13 deposition. He has to answer your questions and
14 he said he doesn't recall what the yield rate
15 is.

16 MR. SCHUMACHER: Can you let him answer
17 now?

18 A. Are you asking me to do the calculation?

19 Q. No. What I'm asking you is when you
20 present this case to a jury --

21 A. Yep.

22 Q. -- I'm going to ask you what's the
23 difference between the yield rate on the
24 proposal you made in 2015, on June 29th, and you

1 have your people, your lawyer Bo Brownlee, your
2 lawyer Lee Fisher -- or Lee Fisher -- David
3 Fisher make a proposal to the community and
4 compare that to what the yield rate Lifestyle
5 would have received and you would have received
6 when this project was increased to 730
7 residential units. You can do that, can't you?

8 MR. MILLER: Paul, respectfully that's a
9 statement. What's the question?

10 MR. SCHUMACHER: The question -- you
11 stepped over me again.

12 Q. You can do that, can't you?

13 MR. MILLER: Objection to form.

14 A. I can do -- if you give me the data, I
15 can do the analysis.

16 Q. Okay. I would like the data so that I
17 can look at it before I ask you that question.
18 Is that fair?

19 MR. MILLER: That's for his lawyers to
20 determine. That's not for him to determine.

21 MR. SCHUMACHER: Well, no, no.

22 MR. MILLER: You know the course of
23 discovery here, Paul.

24 MR. SCHUMACHER: No, it's not.

1 MR. MILLER: whether he's going to give
2 you documents and data and information, that's
3 why he has lawyers, that's why the discovery
4 process exists.

5 Don't answer that.

6 BY MR. SCHUMACHER:

7 Q. Mr. DeAscentis, my question is only that
8 when I ask you that question in front of a jury,
9 isn't it fair that I have the documents before I
10 ask you that question so that I can understand
11 the analysis?

12 MR. MILLER: It all depends on the
13 relevance of the question, the relevance of the
14 analysis. I don't see it today sitting here
15 today, and we can discuss it offline.

16 Don't answer that question. You're not
17 to decide what's appropriate for him to have
18 before a jury.

19 MR. SCHUMACHER: You're instructing him
20 not to answer the question?

21 MR. MILLER: Yes. You're asking him to
22 make legal judgment calls in this litigation.

23 MR. SCHUMACHER: No.

24 MR. MILLER: That's me.

1 MR. SCHUMACHER: I'm asking you to make
2 a business judgment. I'm asking you --

3 MR. MILLER: Not what you're entitled to
4 have before you ask questions before a jury.
5 Paul, that's for us to decide. Let's deal with
6 it off line.

7 MR. SCHUMACHER: Let me rephrase the
8 question, then.

9 BY MR. SCHUMACHER:

10 Q. You would need the documents, including
11 the pro forma or any yield projections, in order
12 to assess the difference between yield rates
13 from a project that you proposed in 2015 and a
14 project you proposed in 2020, wouldn't you?

15 MR. MILLER: Objection to form.

16 You may answer.

17 Q. You can't do it --

18 A. I would need information.

19 Q. And you would be willing to provide that
20 to your attorneys?

21 MR. MILLER: No, that -- that's best
22 determined between the attorneys. Make a
23 request, Paul. We'll deal with it. You're not
24 going to ask this witness to make judgment calls

1 in discovery in this discovery deposition.

2 MR. SCHUMACHER: Well, just for the
3 record, I'm making the request. And what I
4 don't want to hear is that the discovery cutoff
5 has come up and you're not going to --

6 MR. MILLER: Sounds like you regret not
7 requesting this information earlier. We'll deal
8 with it off line.

9 MR. SCHUMACHER: I did request this
10 information earlier. I made lots of requests
11 and I didn't get all the information.

12 MR. MILLER: Well, this is the first
13 we're hearing of it.

14 MR. SCHUMACHER: Speaking of which,
15 let's mark this one.

16 ==0==

17 (Deposition Exhibit 27 marked.)

18 ==0==

19 BY MR. SCHUMACHER:

20 Q. Have you had a chance to review
21 Exhibit 27?

22 A. Yes.

23 Q. Is this a true and accurate copy of an
24 email that Chad Thompson sent to you January 27,

1 2021?

2 A. Yes.

3 Q. It appears that there was an attachment,
4 something called the -- looks like the
5 December 4th, 2020 worthington yield study
6 email. You see that?

7 A. Yes.

8 Q. Do you believe that your company still
9 possesses the yield study?

10 A. Yes.

11 Q. Do you see where it says -- Chad says
12 per our texts earlier in the evening?

13 A. Yes.

14 Q. And this is regarding the LC Worthington
15 project?

16 A. Yes.

17 Q. And that's the project involved in this
18 lawsuit?

19 A. Yes.

20 Q. Did you provide your text email
21 communications with Mr. Thompson and others
22 about the Lifestyle Communities Worthington
23 project --

24 MR. MILLER: Objection.

1 Q. -- that forms the basis of this lawsuit?

2 MR. MILLER: Objection to form.

3 A. Can you repeat that? I'm not sure I
4 understood. Did I give Chad my text?

5 MR. SCHUMACHER: Julia, could you read
6 back my question. I thought it was pretty good.

7 (Record read as requested.)

8 MR. MILLER: Same objection.

9 A. Provide them to who?

10 Q. To your lawyers.

11 MR. MILLER: You can answer that
12 question. Don't discuss any discussions you had
13 with your lawyers, but you can answer that
14 question, whether you provided emails and texts.

15 A. Yes.

16 Q. I couldn't hear you.

17 A. Yes.

18 Q. You did?

19 A. I assume I did.

20 Q. Your answer was I assume I did?

21 A. Well, I remember --

22 Q. Is that what you said?

23 A. -- my assistant coming in and saying in
24 conjunction with the lawsuit they need to get

1 ahold of all your information, and I said okay.
2 I'd assume they -- I didn't personally go
3 through my own texts and email, but I gave them
4 access to all my devices. So that's why I would
5 say yes.

6 Q. I don't --

7 MR. SCHUMACHER: Mr. Miller, I don't
8 believe we've received any -- certainly not the
9 text that refers -- has been referred to in this
10 email. So we would ask that you supplement your
11 discovery responses to provide text messages
12 from Mr. Michael DeAscentis that relate to the
13 Lifestyle Communities Worthington project at
14 issue in this lawsuit.

15 MR. MILLER: So noted. And as with all
16 of your requests today, we'll take a look at it
17 for responsiveness and the existence of the
18 documents.

19 MR. SCHUMACHER: Are you suggesting we
20 didn't request text messages?

21 MR. MILLER: I've said that for each of
22 your informal requests here today.

23 MR. SCHUMACHER: That's not my question.
24 My question is are you suggesting --

1 MR. MILLER: Luckily, I'm not under oath
2 and in deposition so I don't have to answer your
3 questions. I'm simply saying I note your
4 request. We'll look in to see whether you
5 requested it and whether responsive documents
6 exist.

7 BY MR. SCHUMACHER:

8 Q. That document refers to a December 4th,
9 2020 yield analysis?

10 A. Yes.

11 MR. MILLER: Objection to form.

12 Q. Thank you.

13 You just said you think you probably
14 have that?

15 A. I don't know if I have it. I said --

16 Q. The company?

17 A. The company.

18 Q. Sorry to confuse you.

19 MR. MILLER: Do you need to take a
20 break?

21 THE WITNESS: No.

22 Q. In addition to the yield analysis, do
23 you compile other documents to make up this pro
24 forma?

1 MR. MILLER: Objection to form. I'm not
2 sure I understand the question.

3 You may answer if you do.

4 MR. SCHUMACHER: I'm not asking you.

5 MR. MILLER: I understand.

6 Q. Do you understand my question?

7 A. I don't typically assemble that
8 information. Our team does. There's lots of
9 documents that they use in addition to yield
10 studies.

11 Q. So to be sure I ask for all of them
12 correctly, what would I ask for?

13 A. Interest rates, cap rates, occupancy
14 rates, rental rates, vacancy rates, income
15 rates, construction costs, cap rates, bad debt
16 expense. I mean, there's -- I can provide you a
17 list, but it's a big one.

18 Q. I would like the list.

19 A. Okay.

20 Q. But that would all be true as of the
21 time you're making the yield analysis because
22 those things all change?

23 A. Every day. Sometimes hourly.

24 Q. Right. So you make a yield analysis in

1 2015 based on the data you have at the time,
2 right?

3 A. Yes.

4 Q. And it would be recorded somewhere in
5 Lifestyle Communities possession?

6 A. If we did one.

7 MR. MILLER: If he did -- yeah,
8 objection to form.

9 A. If we did one.

10 Q. If you did one.

11 A. Yeah.

12 MR. MILLER: He testified to that
13 previously.

14 Q. And if you did one at any other time
15 between 2015 and even today you'd still have the
16 data, wouldn't you?

17 A. We'd have the analysis. I don't know
18 that we would have the data that went with it,
19 but we'd have the --

20 Q. And it's a written analysis, isn't it?

21 MR. MILLER: Objection to form.

22 A. Yes.

23 Q. And that would be relevant to the issues
24 we're talking about here today, wouldn't it?

1 MR. MILLER: Objection to form.

2 MR. SCHUMACHER: You don't think --

3 MR. MILLER: He's here as a fact witness
4 answering your questions. If you want him to
5 make value judgments as to what's relevant to
6 the lawsuit, that doesn't -- that's not
7 appropriate.

8 Q. I didn't -- not about the lawsuit. It
9 would be relevant to an assessment of what kind
10 of profit you would be expecting at any
11 particular time when you make a proposal?

12 A. Yes.

13 Q. Thank you.

14 Are you still working with David Fisher?

15 MR. MILLER: Objection to form.

16 A. Yes.

17 Q. Are you working on any projects with
18 David Fisher other than this project?

19 A. Yes.

20 ==0==

21 (Deposition Exhibit 28 marked.)

22 ==0==

23 MR. SCHUMACHER: Twenty-eight, I think.

24 COURT REPORTER: Yes.

1 MR. MILLER: While this witness is
2 reviewing this document, I made mention to it
3 earlier, but unfortunately I apologize. There
4 is a retirement party going on next door for
5 Patti Hanlin, a fixture at our law firm for 46
6 years.

7 MR. SCHUMACHER: Michael, is that
8 bothering you? We can move to another room.

9 THE WITNESS: No.

10 MR. MILLER: I just want to make sure
11 everybody can hear.

12 MR. SCHUMACHER: I'm fine.

13 THE WITNESS: Okay. I've read it.

14 BY MR. SCHUMACHER:

15 Q. Is Exhibit 28 a true and correct copy of
16 an email that David Fisher sent to you on
17 October 29th, 2021?

18 MR. MILLER: Objection to form.

19 You may answer.

20 A. Yes. It's actually got the wrong email
21 address, though.

22 Q. Yeah. I was about to ask you that
23 question. It says FDL Farms Limited and then in
24 parenthesis has your email address. What is

1 that?

2 A. It's a farm I used to own out in -- out
3 by Longaberger baskets. It's an old email
4 address. It's probably -- you asked me earlier
5 I go by M. DeAscentis Jr. This is when I
6 originally started the company.

7 Q. But fortunately also used your Lifestyle
8 Communities email address so you got it, right?

9 A. Well, he didn't put the J-R on there so
10 I'm actually not sure how I got it. This
11 probably would have went to my dad.

12 Q. Okay. The document subject is a
13 forwarded email about the Methodist site LOI.
14 Is that what it says?

15 A. Yes.

16 Q. That's a letter of intent. Is that what
17 it means?

18 A. Yes.

19 Q. LOI means.

20 Do you know Derek Rogers?

21 A. No.

22 Q. Do you recall in October of 2021
23 receiving information from David Fisher that
24 apparently someone wanted to make an offer for

1 the UMCH property that you owned?

2 MR. MILLER: Objection to form.

3 You may answer.

4 A. I remembered -- I remembered getting a
5 call that one of the Showes wanted to buy the
6 property.

7 Q. Do you see in the middle of the first
8 page of Exhibit 28 it says -- that Derek Rogers
9 writes to David Fisher and provides key terms of
10 a proposal?

11 A. Yes.

12 MR. SCHUMACHER: Let's mark this 29.

13 ==0==

14 (Deposition Exhibit 29 marked.)

15 ==0==

16 THE WITNESS: It's a big document. I'm
17 generally ready unless you're asking me like
18 really specifics.

19 BY MR. SCHUMACHER:

20 Q. I really only have questions about the
21 first page of Exhibit 29.

22 A. Okay.

23 Q. This -- does this refresh your
24 recollection that an actual firm offer was made

1 by New England Development Company LLC to
2 purchase the property on or about October 29th,
3 2021?

4 MR. MILLER: Objection to form.

5 A. Yeah. I don't remember receiving this.
6 Remember -- I do remember getting a call that
7 the Showe family was interested in making a
8 proposal.

9 Q. In October of 2021?

10 A. Yes.

11 Q. That's before your application to rezone
12 the property was denied by city council?

13 A. October of 2021. Before? Yes.

14 Q. The first page of the document is
15 apparently a letter directed to your attention
16 as CEO of Lifestyle Communities. You see that?

17 A. Yes.

18 Q. And this is a document that you would
19 have received at the time, right?

20 MR. MILLER: Objection to form. Asked
21 and answered.

22 A. Yes.

23 Q. Okay. Do you know the Showe family?

24 A. I know Burke Showe, his dad.

1 Q. S-H-O-W-E, Showe?

2 A. Yes, Showe.

3 Q. Is it Showe?

4 A. Showe.

5 Q. Thank you.

6 Did you know that they were investing in
7 downtown Worthington for over 30 years?

8 A. I knew they owned the Worthington Inn.

9 Q. Okay. Would you agree that you've had a
10 long, arduous and frustrating process relative
11 to trying to develop the land there?

12 MR. MILLER: Objection to form.

13 Q. Is that a fair characterization?

14 A. Yes.

15 Q. Apparently they felt that they could
16 engage the community and develop this property
17 better than you could. Is that a fair reading?

18 MR. MILLER: Objection to form.
19 Speculative. I don't know what they meant when
20 they wrote it.

21 MR. SCHUMACHER: I don't care what you
22 think, Joe. I just want to know what the
23 witness thinks.

24 Q. I want to know if you think that's a

1 fair reading of the letter. That's all I want
2 to know.

3 MR. MILLER: You asked does he think
4 they meant.

5 A. No.

6 MR. MILLER: I don't think he knows what
7 they meant when they wrote it.

8 Q. Okay. That's fine. You can say no.

9 A. Yeah. No, I don't know.

10 Q. You can say yes. You can say no.

11 A. I mean, I don't know what --

12 Q. I don't care.

13 A. I don't know what they thought. I don't
14 know about their relationship with anybody to
15 tell you the truth.

16 Q. Nonetheless, they made you a
17 \$10 million --

18 A. Yes.

19 Q. -- offer to purchase the property --

20 A. Yes.

21 Q. -- because, according to their letter,
22 they felt they could do a better job at engaging
23 the community to accept a multi-family mixed
24 retail and commercial development?

1 MR. MILLER: Objection to form.

2 Q. Isn't that what the letter says?

3 A. Yes.

4 Q. Okay. So again, to be fair, anyone
5 reading this letter would understand that
6 they're making a \$10 million offer to purchase
7 the property?

8 A. Yes.

9 Q. All right. And remind me. What did you
10 purchase the property for?

11 A. I figured you were going to ask me that.

12 MR. MILLER: All we need is your best
13 recollection.

14 Q. 5.2 million sound familiar?

15 A. I thought it was a little more than
16 that.

17 Q. Well, yeah, but then you -- Bo got an
18 \$800,000 credit back because you gave up the
19 contingency. You remember that?

20 A. Okay. Yes.

21 Q. So you purchased the property for 5.2
22 and you have an offer for 10 million. Is that
23 fair?

24 A. Yes.

1 Q. All right. You turned it down?

2 A. I didn't respond to it.

3 Q. You didn't accept it?

4 A. Yes. We're not in the business of
5 buying and selling land. We're in the business
6 of buying and developing land. All developers
7 think they can do it better.

8 Q. I'm sorry, we are -- are you -- I
9 didn't --

10 A. I was answering your question. I turned
11 it down because we're not in the business of
12 buying and selling land. We're in the business
13 of buying and developing land.

14 Q. If you can get rezoning approved?

15 A. Well, I knew I was going to get the
16 zoning approved because I had the comprehensive
17 plan, and I knew I was going to be able to
18 develop it.

19 Q. But the city of Worthington Municipal
20 Planning Commission considered your plan in
21 relation to the comprehensive plan that existed
22 at the time and found it wanting, didn't they?

23 MR. MILLER: Objection to form.

24 A. Wanting?

1 Q. They found that it did not meet the
2 comprehensive plan?

3 MR. MILLER: Same objection.

4 A. Yes.

5 Q. Unanimous vote of the municipal planning
6 commission after considering your plan in two
7 public meetings found it to be not in accordance
8 with worthington's comprehensive plan.

9 MR. MILLER: Same objections.

10 Q. Can we agree on that?

11 A. Yes.

12 Q. And then the application was presented
13 to city council in December of 2021 in a public
14 meeting again, right?

15 A. Yes.

16 Q. Were you at the meeting or did you watch
17 the meeting?

18 A. Neither.

19 Q. But you are aware that a unanimous city
20 council rejected the application for the reasons
21 they expressed on the public record?

22 A. We wouldn't be here if they didn't
23 reject it.

24 Q. Okay. But you understand that, right?

1 A. That they rejected it?

2 Q. Yes.

3 A. Yes.

4 Q. And you also knew that -- or you now
5 know that you could -- you could have reapplied
6 with a different proposal within six months of
7 the rejection by the MPC?

8 A. I don't know that.

9 MR. MILLER: Objection to form.

10 Q. You don't?

11 A. No, I don't know that.

12 Q. Mr. DeAscentis, if you didn't file the
13 lawsuit, you could have re -- I'm sorry, take
14 that back. Strike that.

15 There's nothing preventing you from
16 filing a new application in the city of
17 Worthington to rezone this property even as of
18 today, is there?

19 MR. MILLER: Objection to form.

20 A. I don't know.

21 MR. MILLER: You may answer if you know.

22 A. I don't know.

23 Q. Have you tried?

24 MR. MILLER: Same objection.

1 A. No.

2 Q. Have you approached city council or any
3 members of the public to engage them on what
4 they desire for the property?

5 A. I haven't.

6 MR. MILLER: Objection to form. You
7 mean -- you've asked about the extensive
8 outreach they did at the time. You mean since
9 the application was denied?

10 Q. Since the application was denied, have
11 you done anything?

12 A. I haven't personally. I don't know if
13 anybody else has on our team.

14 Q. Have you instructed anyone on your team
15 to reevaluate the feedback you got from city
16 council and its residents to amend the plan to
17 seek rezoning?

18 MR. MILLER: Objection to form.

19 A. No.

20 Q. Has LC or you obtained any appraisal of
21 the property since the denial of the rezoning
22 and adoption of Worthington's new comprehensive
23 plan in 2022?

24 MR. MILLER: Objection to form.

1 A. I don't know.

2 Q. Could you obtain an appraisal of the
3 property -- and I don't want to know anything
4 about this litigation, but could you obtain an
5 appraisal of the property after the plan update
6 in January of 2022?

7 A. Yes.

8 Q. To your knowledge, Mr. DeAscentis, has
9 the city of Worthington ever had any resolution
10 or suggested resolution to rezone the property
11 to be used exclusively as a park?

12 MR. MILLER: Objection to form.

13 A. Have they asked me?

14 Q. No.

15 A. No.

16 Q. Have they ever -- do you know if they've
17 ever done that?

18 A. I'm sorry, could you repeat the
19 question?

20 Q. To your knowledge, city council's never
21 had any proposal to rezone the property to be
22 used exclusively as a park, have they?

23 MR. MILLER: Objection to form.

24 A. I don't know.

1 Q. Does Lifestyle Communities knows that --
2 know that?

3 MR. MILLER: Same objection.

4 A. I have no idea.

5 Q. Have you or your team ever heard that
6 city council's appropriated money to purchase
7 the property?

8 A. No.

9 MR. SCHUMACHER: If I could have a few
10 minutes with my lawyer, I will probably be done
11 in less than 10 minutes.

12 MR. MILLER: Sure.

13 THE VIDEOGRAPHER: Off the record.

14 (Recess taken.)

15 THE VIDEOGRAPHER: Back on the record.

16 BY MR. SCHUMACHER:

17 Q. Mr. DeAscentis, I've asked you about a
18 number of documents today that either you or
19 your company L -- Lifestyle Communities Limited
20 or its 50-some affiliates have. You remember
21 those questions?

22 A. Yes.

23 Q. And I'm not asking you for any
24 communication between you or your lawyers. My

1 simple question is if I give you a list of the
2 things I've asked for can you direct your people
3 to obtain those materials and provide them to
4 your lawyers?

5 MR. MILLER: Same objections.

6 Q. Are you able to do that?

7 A. Yes.

8 Q. Okay.

9 MR. SCHUMACHER: Thank you very much.
10 That's all the questions I have for you. I
11 appreciate your time.

12 THE WITNESS: All right. Thank you.

13 MR. MILLER: Thank you. We'll read and
14 there may -- I don't know what you all have done
15 with prior depositions related -- relative to
16 the protective order, but we'll have to deal
17 with that as well.

18 THE VIDEOGRAPHER: Off the record.

19 (Signature not waived.)

20 --O--

21 Thereupon, the testimony of January
22 26, 2024, was concluded at 2:39 p.m.

23 --O--

24

CERTIFICATE

STATE OF OHIO :
SS:
COUNTY OF FRANKLIN :

I, Julia Lamb, RPR, CRR, a
stenographic court reporter and notary public in
and for the State of Ohio, duly commissioned and
qualified, do hereby certify that the
within-named MICHAEL DEASCENTIS II was first
duly sworn to testify to the truth, the whole
truth, and nothing but the truth in the cause
aforesaid; that the testimony then given was
taken down by me stenographically in the
presence of said witness, afterwards
transcribed; that the foregoing is a true and
correct transcript of the testimony; that this
deposition was taken at the time and place in
the foregoing caption specified.

I do further certify that I am not a
relative, employee or attorney of any of the
parties hereto; that I am not a relative or
employee of any attorney or counsel employed by
the parties hereto; that I am not financially
interested in the action; and further, I am not,
nor is the court reporting firm with which I am
affiliated, under contract as defined in Civil
Rule 28(D).

In witness whereof, I have hereunto
set my hand at Columbus, Ohio, on this 9th day
of February, 2024.

Julia Lamb

Julia Lamb, RPR, CRR
Notary Public, State of Ohio

My commission expires: 10-10-27

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